PART I.

RULES UNDER THE LAND REVENUE CODE.

6th December 1881.

In exercise of the powers conferred by section 91 of the Indian Registration Act, 1877, and by section 213 of the Bombay Land Revenue Code, 1879, and of all other powers enabling him on this behalf, the Governor in Council is pleased to make the following rules to regulate searches for, and the inspection of, and the grant of extracts from, or copies of, public documents, in supersession of all previous rules and orders on the same subjects :—

I.—Inspection.

Inspection of documents to which the public have a legal right when and how to be permitted.

1. The documents, maps, registers, accounts and records, the right of inspection of which is provided for in section 91 of the Indian Registration Act, 1877,* and in section 213 of the Bombay Land Revenue Code, 1879, and all public documents which any person has, under the provisions of any law for the time being in force, a right to inspect, shall be open to inspection in the office of the officer in charge of the same during the usual office-hours every day, except Sundays and public holidays, on payment of the fee hereinafter prescribed in this behalf: Provided always that no fee shall be levied by any village officer for allowing inspection of any such document, map, register, account or other public document as aforesaid which is in his charge.† (Published Notn. No. 7368 *B. G. G.* 1881, pp. 792 to 794.)

Inspection not to be permitted without a legal right.

2. Except in the cases named in the last preceding Rule, no inspection of any public document will be allowed.

II.—Extracts and Copies.

Uncertified copies and extracts how obtainable.

3. No uncertified copy or extract shall be obtainable of or from any document other than those described in Rule I, nor otherwise than under this Rule.

Any person entitled to inspect any public document under Rule I may himself make a copy, or employ his own agent to make a copy, of any public document, or of any portion of any public document of which he has duly obtained inspection, but no copy so made shall be certified by any public officer.

---

* Amended by Act VII of 1886, section 6.

† "*Sanads being documents which Government give into the hands of the persons whose titles they evidence, they do not form part of the records of any Government office. The only record kept of them is a register. Hence the law provides for extracts being given from these registers, when applied for, but not for the grant of copies of the sanads themselves.*

In cases in which it is found necessary to make out a sanad in the names of several sharers, a copy may be given gratis to each, but each of such copies should be signed and executed by the same officer and treated as an original document. In no other case can a copy of a sanad be granted, but an extract from the register of sanads may be given on payment of the fees prescribed in the rules under section 213 of the Land Revenue Code and section 91 of the Registration Act." (G. R., R. D., No. 4180, dated 2nd June 1883.)

Certified copies or extracts of or from the documents described in Rule I how obtainable.

4. The officer in charge of any public document described in Rule I shall cause to be prepared, and give a certified copy of the same, or of any portion thereof under his own signature, to any person applying for such copy, on payment of the fee hereinafter prescribed in this behalf: Provided that every application for a certified copy of any public document in the charge of a village officer shall be made to the Mámlatdár or Mahálkari to whom such officer is subordinate, who shall cause the copy to be prepared by the village accountant. Every such copy, after being compared by the village accountant with the original, shall be signed by him in token of its being correct, and shall be sent by him to the Mámlatdár or Mahálkari for the purpose of being certified and made over to the applicant. No village officer shall himself certify a copy to be a true copy, or receive or grant an application for any such copy.

When certified copies or extracts may be granted of or from public documents other than those described in Rule I.

5. Subject to the proviso contained in the last preceding Rule, certified copies of public documents, or of portions of public documents other than those described in Rule I, may be granted by the officer in charge thereof to any person applying for the same, on payment of the fee hereinafter prescribed in this behalf: Provided—

(*a*) that in disposing of any such application the officer to whom the same is made shall be guided by the orders of Government and of any officer to whom he is subordinate, and in case of doubt shall, before disposing of the same, refer to his immediate superior for instructions;

(*b*) that no copy of any official correspondence or of any opinion of a Government law officer, or of any order or resolution embodying any such opinion, shall be given by any officer subordinate to a Collector without the Collector's previous permission, or by any survey officer without the previous permission of the Survey Commissioner;

(*c*) that no copy shall be granted of any record, map or plan which has been printed or lithographed and published under the authority of Government;

(*d*) that no copy of any document is to be given in any case in which it is obvious that such a course would be prejudicial to Government.

Fee-endorsement to be written on certified copies.

6. On every certified copy or extract granted under these Rules there shall be endorsed, by the officer who receives the fee for the same, a receipt in the following form (namely):—

"Received Rs. a. , being the fee for this certified copy.
Dated the of 189 . (Signed) *A. B.*"

Form of certificate.

7. The certificate on all certified copies or extracts granted under these Rules shall be in the form prescribed by section 76 of the Indian Evidence Act.

III.—SEARCHES.

Search-fee when payable.

8. When an application is made for an inspection or copy of any public document, or of any portion of a public document, and such application does not distinctly describe the number, date and nature of the document required; or if the description given in such application is incorrect, and it shall in consequence be necessary for the officer in charge of the document to search his records in order to find it, a fee, at the rate hereinafter prescribed, shall be payable by the applicant for such search, whether the inspection or copy for which he applies shall, on examination of the said document by the said officer, be granted or not: Provided that no such fee shall be levied by a village officer.

IV.—FEES.*

Table of fees to be levied.

9. The following fees shall be levied in cash under these Rules (namely):—

(1) For every inspection granted under Rule I by any officer other than a village officer... ...	8 annas.
(2) For every certified copy of a public document not falling under Article (3) of this Table:—	
(*a*) if the original be in English, for every 100 words or fraction of 100 words	2 annas.
(*b*) if the original be in the vernacular, for every 100 words or fraction of 100 words...	1½ annas.
(*c*) if the original be in a tabular form, whether in English or the vernacular	twice the rates respectively named in clauses (*a*) and (*b*).
(3) For every certified extract from a Register of Alienations granted under section 53 of the Bombay Land Revenue Code.	1 anna for every rupee of the amount of alienated revenue, or if the Sanad lost or destroyed had been granted under Bombay Act IV of 1868, or under section 133 of the Bombay Land Revenue Code, 1879, a sum equal to one-half of the survey fee which the holder of the building site included in the Sanad would be liable to pay under section 132 of the said Code if not exempted by the second paragraph of that section: Provided that the fee shall in no case exceed Rs. 10 or be less than 8 annas.

(Notn. No. 3410, *B. G. G.*, 1883, p. 333.)

* Non-official copyists should be paid at a rate varying from two-thirds to the full amount of the fees leviable under Rule 9. (G. R. No. 7669, dated 26th September 1884, R. D.) Kulkarnis and Talátis are to be permitted to take fees for making copies of maps and plans. (G. R. No. 4106, dated 21st May 1885, R. D.)

(4) For every certified copy of a map of a survey number, or of a recognized share of a survey number, or of a field, or of any ordinary (uncoloured) map, or plan of any immoveable property...	... 1 rupee.
(5) For every certified copy of a map or plan, or of any portion of a map or plan not falling under Article (4) of this Table.	such fee not exceeding fifteen rupees, and not less than one rupee, as the officer who certifies the copy shall determine : Provided that no fee exceeding Rs. 5 shall be charged by any officer subordinate to a Collector except with the permission of the Collector, or by a survey officer except with the permission of the Survey Commissioner.
(9) For every search made by any officer other than a village officer.	1 rupee for each year of which the records shall be searched.

Fee to be paid in advance.

10. Every fee payable in accordance with the foregoing table shall be paid in advance

Disposal of fees.

11. The amount of all fees so received shall be entered in a separate book to be kept for this purpose by the officer in charge of the records, and shall be remitted before the close of each month to the nearest Government Treasury after deducting the amount paid, in the case of certified copies and extracts, to section-writers under Government Resolution No. 3356, dated 11th November 1874, Financial Department, or under any other orders of Government that may be hereafter issued.

V.—MISCELLANEOUS.

Applications under these Rules to be made in writing.

12. Every application under these Rules, except an application under Rule 1 to a village officer, must be made in writing.

Proceedings to be recorded on each application.

13. Every such application shall be numbered and filed by the officer to whom it is presented, and shall be endorsed with a memorandum, under his signature, stating the date on which it was presented, the amount of fees, if any, received either at the time of presentation thereof or subsequently at any time, and the date and manner in which the application was disposed of.

Care to be exercised in granting inspections or copies as a matter of right.

14. In considering any application purporting to be made under sections 90 and 91 of the Indian Registration Act, 1877, or under section 213 of the Bombay Land Revenue Code, 1879, or under any other law which grants to any person a right of inspection, special care must be taken to see that the public document, with respect to which such application is made, is

one to which the law relied upon is applicable, and that the applicant is a person entitled to inspection (and, therefore, if he requires it under section 76 of the Indian Evidence Act, to a copy) before granting the application as a matter of right.

Saving of the provisions of the Stamp and Court Fees Acts.

15. Nothing in these Rules is to be deemed to affect the provisions of the Stamp Act or Court Fees Act. The stamp-duty or court-fee with which any application, copy or extract made or furnished under these Rules may be chargeable, is to be deemed to be in addition to the fees prescribed by Rule 9, and care is to be taken that the requirements of the Stamp Act and Court Fees Act are properly fulfilled in respect of every such application, copy or extract.

"Public document" defined.

16. In these Rules the words "public document" are to be deemed to have the same meaning as in the Indian Evidence Act I of 1872 (*see* section 74 of that Act).

Local extent of these Rules.

17. Nothing in these Rules applies to the City of Bombay or to any civil or criminal court.

1st March 1890.

Under the provisions of section 198 of the Bombay Land Revenue Code, 1879, and in supersession of Notification No. 6133, published at page 186 of the *Bombay Government Gazette* for 1882, Part I, His Excellency the Governor in Council is pleased to authorise the following fees* for authenticated copies and translations of decisions, orders, and the reasons therefor, and of exhibits in formal or summary enquiries made under the said Code, namely,— (Notn. No. 2302, *B.G.G.* 1890, Pt. I. p. 289.)

	For every 100 words or fraction of 100 words—
Copying Fees—	
(1) 1½ annas.	(1) In the case of English copies.
(2) 1 anna.	(2) In the case of vernacular copies.
(3) Double the ordinary rates.	(3) If the original be in a tabular form, whether in English or the vernacular.
Fees for examining and comparing—	
¼ anna.	For every 100 words or fraction of 100 words.
Translation Fees—	
8 annas.	For the first 100 words or fraction of 100 words.
4 annas.	For every subsequent 100 words or fraction of 100 words.

RULES MADE WITH THE SANCTION AND UNDER THE ORDERS OF THE GOVERNOR IN COUNCIL BY THE COMMISSIONER IN SIND, AND THE COMMISSIONERS, NORTHERN DIVISION, AND SOUTHERN DIVISION, UNDER SECTIONS 152, 158 AND 183 OF THE BOMBAY LAND REVENUE CODE, 1879. (Notn. No. 2459, *B. G. G.*, 1883, Pt. I., pp. 260-261.)

I.—Notices of Demand (Section 152).

1. Notices of demand shall be issued by the

---

* Fees for comparing and examining copies of decisions, &c., should be credited to Government. (G. R. No. 3101, dated 20th April 1883, R. D.)

By whom to be issued.

Mámlatdár or Mahálkari within whose charge an arrear accrues.

When to be issued.

2. Such notices shall not usually be issued until ten days after the arrear has accrued.

Amount of notice fee.

3. The costs of issuing notices of demand shall be leviable in the shape of a fixed fee of four annas for each notice, if the amount of the arrear does not exceed Rs. 5, and of eight annas in any other case.

Discretionary remission of fee.

4. The Collector, or the Assistant, or Deputy Collector in charge of a táluka, may, at his discretion, remit the fee in any case, if it shall appear to him that its levy will occasion undue hardship.

II.—Arrest and Imprisonment of Defaulters (Section 158).

Powers of arrest by whom to be exercised.

1. The powers of arrest conferred by section 157, may be exercised by Collectors and by any Assistant or Deputy Collector in charge of tálukas specially empowered by the Collector in this behalf, and by subordinate officers acting in each case under the express authority of a Collector or of any such Assistant or Deputy Collector.

Costs of arrest.

2. The costs of arrest shall be according to the following scale :—

If the amount for the recovery of which the arrest is made—	Rs.	a.	p.
Does not exceed Rs. 25...	0	4	0
Exceeds Rs. 25 but does not exceed Rs. 100	0	8	0
„ „ 100 „ „ „ 500	1	0	0
„ „ 500 „ „ „ 1,000	2	0	0
„ „ 1,000 „ „ „ 5,000	4	0	0
„ „ 5,000	8	0	0

Subsistence money during detention or imprisonment.

3 The subsistence money to be paid by Government to any defaulter under detention or imprisonment shall be fixed by the Collector, or by the Assistant or Deputy Collector who orders the arrest, within the following limits, *viz.* :—

	Not less than Rs. a. p.	Not more than Rs. a. p.
If the defaulter is a European...	1 0 0	1 8 0
If the defaulter is a Eurasian or a Native of Portuguese descent.	0 8 0	1 0 0
In any other case	0 3 0	0 12 0

**III.—Expenses of Sales (Section 183).*

1. The expenses of a sale shall be taken to be

---

* *Local Fund Cess on lands sold in default of payment of land revenue.*

Purchasers of forfeited occupancies sold at once should not be required to pay one anna in each rupee of the price realized to local funds, nor should one anna in the rupee of the whole sale proceeds be credited to local cess. But as the one-anna cess is chargeable on arrears of assessment and recoverable as land revenue, the sale proceeds of such lands should be credited in accordance with section 183 of the Land Revenue Code—

(*a*) to expenses of sale,
(*b*) to arrears of—
(1) land revenue,
(2) one-anna cess,

the surplus, if any, being paid to the defaulter. (G. R. No. 2002 dated 10th March 1883.)

6th December 1881.

In exercise of the powers conferred by section 214 of the Land Revenue Code, 1879, and of all other powers enabling him in this behalf, the Governor in Council is pleased to make the following General Rules and Orders in supersession of all existing rules and orders on the same subjects :—

I.—PRELIMINARY.

1. In these Rules and Orders :

(Notn. No. 7368, *B. G. G.*, 1881, Pt I., pp. 795-816.)

Interpretation.

(*a*) words and expressions which are defined in the Code have the same meaning as in the Code ;

(*b*) "Chapter" means a chapter of the Code.

II.—SECURITY TO BE FURNISHED BY REVENUE OFFICERS.

[Sections 23 and 214 (*i*) of the Land Revenue Code, 1879.]

2. The Revenue officers hereinbelow mentioned shall, previously to entering upon their office, furnish security to the amounts respectively entered against their names* :

By what officers and to what amounts security is to be furnished.

	Rs.
Head Accountants ... ... } Mámlatdárs ... ... }	5,000
First Kárkúns to Mámlatdárs	1,000
Second ditto	500
Mahálkari with Treasury	1,500
First Kárkún to ditto	500
Mahálkari without Treasury	500
Treasurer at Poona	80,000
Ditto at Kánara, Kolába and Ratnágiri.	20,000
All other Treasurers	40,000
First Kárkún to Treasurers of Kánara and Ratnágiri	1,000
All other First Kárkúns to Treasurers ...	2,000
Second Kárkún to Poona Treasurer ...	2,000
Kárkúns other than any of the foregoing employed in Huzúr or Mámlatdárs' offices on shroff's work	1,000
Ditto in Mahálkaris' offices...	500

(Notn No. 6331, *B. G. G.*, 1882, Pt. I., p. 707.)

	Rs.
Stipendiary Patels or Village Accountants appointed under section 16 of the Code, whose annual emoluments exceed Rs. 50.	200, or the amount of one year's emoluments of such officer, whichever sum be the smaller.

(Notn. No. 4582, *B. G. G.*, 1891, Part I., p. 568.)

2A. Every person who has furnished no security whatever, shall, on being appointed to officiate in any office such as is referred to in Rule 2, whatever the probable duration of his tenure thereof, furnish before entering thereon security to the amount required in respect of such office by the said rule or to such smaller amount as the Collector in the particular case may deem reasonable and sufficient.

---

* Instruments executed by Government officers and their sureties to secure the due accounting for property received by such officers by virtue of their office are exempt from stamp duty. (*Bombay Government Gazette* of 1889, p. 1008 *et seqq*—vide *infra* Part X.)

[To be inserted in the margin of Rule No. 2 of the Rules made under Sections 23 and 214 (*i*) of the Bombay Land Revenue Code, 1879, printed at page 8 of the Compilation of Rules in force in the Revenue Department.]

[Notification No. 6318, *Bombay Government Gazette*, 1897, Part I, page 1518.]

To the list in Rule 2 add—

Kárkúns or clerks who write the registers of copying, comparing, search and inspection fees, and take charge of moneys advanced for those purposes, in Revenue Courts.	Rs. 200.

How to be calculated.

two annas in the case of moveable property, and four annas in the case of immoveable property, or in either case $\frac{1}{64}$th of the amount, if any, realized by the sale, whichever is the greater.

Penalty leviable under Section 148, B. L. R. C.

The Governor in Council has directed that the maximum penalty leviable under section 148 of the B. L. R. C., 1879, in default of payment of land revenue shall not exceed one-fourth of the amount of land revenue overdue.

It should be understood that resort is only to be had to the provision of section 148 in the case of ryots who are known to be able to pay but wilfully delay to do so. A penalty imposed may be remitted if the officer imposing it afterwards finds reason to believe that the ryot was not able to pay punctually. (G. R. No. 2485, dated 27th March 1883, R. D.)

Notes of Orders on Procedure, &c.

Award of costs to parties in cases under the Land Revenue Code.

Inasmuch as the office of any authority holding a summary inquiry under the provisions of the Bombay Land Revenue Code is a Civil Court for the purposes of such inquiry, such court may direct by whom the costs of each party are to be paid, whether by himself or by any other party to the inquiry and whether in whole or in what part or proportion. (G. R. No. 4468 of 10th July 1882, R. D.)

Mode of serving processes under the Land Revenue Code.

Processes in summary and formal enquiries under the Bombay Land Revenue Code, 1879, are to be served at the hands of persons temporarily employed for the purpose, and the charge on their account is to be debited to 'Land Revenue'. (G. R. No. 7350 of 21st October 1882, R. D.)

Dwelling-houses not to be broken into for the purpose of recovery of arrears.

No doubt, on the analogy of the English law and of the law now expressly applied by the Indian Legislature to our Civil Courts, it would be held that a dwelling-house may not be broken into for the purpose of distraining goods for the recovery of arrears of land revenue. (G. R. No. 9982 of 19th December 1884, R. D.)

Forms of Warrant of distraint.

No form of warrant of distraint is necessary under section 154, Land Revenue Code.

The Code does not require any form of warrant and the order may take the form of an ordinary order in the course of correspondence. (G. R. No. 1302 of 15th February 1889, R. D.)

Costs of Partition of Estates.

Vide Appendix N., p. 67.

---

2 B. An officer who has furnished security to any amount required by Rule 2, shall not ordinarily, on being temporarily appointed to officiate in any office for which security to a greater amount is required by Rule 2, be required to furnish additional security unless his tenure of such office is in the opinion of the Collector likely to last more than three months.

2 C. Every officer appointed to officiate in any office such as is referred to in Rule 2, shall, if his tenure thereof is in the opinion of the Collector likely to last more than three months, furnish before entering thereon the full security required by Rule 2 in respect thereof.

Form of security.

3. It shall be at the option of the officer required to furnish security to deposit Government paper or to execute a bond for the amount of his security.

Number of sureties.

If he executes a bond, the number of sureties shall be one or more, at his option, if the amount of security does not exceed Rs. 1,000; and, if the amount of the security exceeds that sum, shall be not less than two.

Duties of heads of offices in respect of securities.

4. Heads of offices under whom any officer required to furnish security is serving will be held responsible for seeing that the necessary security is duly furnished, and that it is good and sufficient both at the time it is first furnished and afterwards, until such time as the officer leaves the office or is transferred to an appointment in which security is not required.

For this purpose heads of offices shall carefully scrutinize the security and satisfy themselves as to its sufficiency both when it is first offered and also once a year after it has been accepted, and if they deem it insufficient shall require the officer concerned to furnish additional or fresh security.

Care must be taken that no one person's security is accepted in behalf of a disproportionately large number of officers, whether such officers belong to the same office or department or not.

Annual statements to be submitted to Commissioners of sufficiency of securities.

5. The Collector, after obtaining similar returns from all heads of offices subordinate to him, shall submit annually to the Commissioner, on or before the 30th June, a statement in the form of Appendix A., showing the results of inquires as to the sufficiency of the security of each officer in his district required by Rule 2 to furnish security.

Surety's property not to be sold without previous report to Commissioner.

6. In the event of any surety being proceeded against under section 187 of the Land Revenue Code, for recovery of the amount, or of any portion of the amount, for which he has become liable, a report shall be submitted to the Commissioner

before the sale of any property of such surety is commenced.

III.—DISPOSAL OF LAND, &c., THE PROPERTY OF GOVERNMENT. [Sections 37, 62 and 214 (*i*).]

Collector to dispose of land, &c., only as authorized in these Rules.

7. Land and all rights in or over the same or appertaining thereto, which are the property of Government, may be disposed of by the Collector in any manner authorized by the following Rules, but not otherwise, except with the previous express sanction of Government:—

Notn. No. 3318, *B. G. G.*, 1890, p. 465.)

(A) The occupancy of salt lands, or of lands occasionally overflowed by salt water, should not ordinarily be disposed of, without first ascertaining by reference to the Salt Department, whether they are wanted or likely to be wanted for salt manufacture.

(B) On receiving an intimation from the Collector of Salt Revenue that any unoccupied land at the disposal of the Collector of the district is wanted or likely to be wanted for salt manufacture, the Collector of the district may, if he sees no objection to its appropriation for that purpose, dispose of such land to the Salt Department, and shall, in such case, cause a note to that effect to be made in the Village Register, and shall also cause to be cancelled any entry in that register as to any assessment fixed on it as land appropriated for purpose of agriculture.

Such land shall thenceforth be at the disposal of the Collector of Salt Revenue, subject to the general orders of Government, to let for the manufacture of salt or to make other arrangements as to its use for that purpose, on such conditions and for such period as, subject to the said orders, he may deem fit.

(C) If an occupant of unalienated land wishes to appropriate the same or any part thereof to the manufacture of salt or the construction of salt-pans, he shall apply to the Collector of the district for permission to do so. The Collector of the district, if he sees no objection to such appropriation, shall consult the Collector of Salt Revenue as to the terms on which such appropriation should be allowed, and may then either—

(*a*) require the applicant to relinquish his occupancy rights and to enter into an agreement that such land shall be placed at the disposal of the Salt Department, subject to a lease in favour of the applicant, on such terms and for such period as the Collector of Salt Revenue, under the general orders of Government, may require, *or* may

(*b*) permit the appropriation applied for, without requiring the occupant to relinquish his occupancy rights either—

(1) on payment of the fine leviable under section 65 and the new assessment, which may be leviable under section 48, *or*

(2) on such terms as may be specially agreed on under section 67 of the Land Revenue Code.

(1) *Transfer of land to Railway Companies or to State Railways.*

Transfers to be regulated by orders of Government.

8. The transfers of land, whether permanently or temporarily, to Railway Companies or to State Railways shall be regulated by the orders of the Government of India and of the Governor of Bombay in Council from time to time issued in this behalf.*

(2) *Alienations.*

Sale of land revenue-free.

9. No land may be sold revenue-free in perpetuity without the previous sanction of the Government of India, excepting, subject to the previous sanction of the Governor of Bombay in Council, small plots of unoccupied waste land not exceeding ten acres in extent as may be required for buildings or gardens; and, except as is otherwise provided in these Rules, no land of any description may se sold revenue-free for a term without the sanction of the Governor of Bombay in Council.†

Revenue-free grants for religious or charitable purposes.

10. Revenue-free grants may be made by the Collector, with the previous sanction of the Commissioner, of land not exceeding in each instance a quarter of an acre in area for the purposes of religious or charitable edifices or institutions, but exemption from assessment shall only be granted for sufficient reasons and not invariably as a matter of course. Land in the neighbourhood of railway-stations shall only be granted revenue-free for dharmshálas, if such dharmshálas, when erected, are to be in the charge of the Local Fund Committee.

Sanads to be issued when revenue-free grants are made.

11. In order to provide against abuse of any grant made under the preceding Rule, a sanad, in one of the forms prescribed in Appendix B., shall be issued to the grantee by the Collector. If a revenue-free grant is made with the sanction of Government for any purpose not mentioned in the preceding Rule, the form of sanad to be issued by the Collector will be specially prescribed by Government.

Every sanad issued under this Rule shall be registered in the register prescribed by Rule 57.

The Collector and all Revenue officers subordinate to him shall exercise due vigilance to prevent the terms of such sanads being either exceeded or evaded.

---

* The rules and orders relating to acquisition of land for Railways, are given in Part II of this compilation.

† *See* Appendix K. containing Government Resolution on alienation of Government land.

(Notn. No. 4771, *B.G.G.*, 1885, Pt. I., p. 760, in substitution of Notification No. 721, *B. G. G.*, 1884, Pt. I., p. 59.)

Revenue-free grants be made in the Dhárwár District to Shetsandis.

11*A*. In the district of Dhárwár, whenever unoccupied land is available for the purpose, the Collector may make a revenue-free grant of land bearing an annual assessment not exceeding Rs. 30 to any Shetsandi who is willing to hold the same in lieu of the usual annual cash remuneration : provided that no such grant shall be made of land of which the value exceeds five hundred rupees.

Sanad unnecessary in such cases.

In the case of a grant made under this Rule no sanad need be issued to the grantee, but it is to be distinctly understood that the revenue-free tenure is granted in consideration of the Shetsandi's service only, and that the land will be resumable at the pleasure of Government.

Transfer of land, &c., belonging to Government not to be made to Municipalities or Local Fund Committees without previous sanction of Government.

12. No revenue-free grant of land and no right in, or over, or appertaining to, any land belonging to Government, may be made to or exercised by a Municipality or a Local Fund Committee without the previous sanction of Government. When any such transfer or exercise of right is sanctioned, it will be made subject to such conditions as Government shall think fit in each case to prescribe.

But nothing in this Rule shall be deemed to prevent the grant of occupancies to Municipalities or Local Fund Committees on the same terms as are applicable to such grants to other persons.

Notn. No. 7609, *B.G.G.*, 1886, Pt. I., p. 930.)

Unoccupied building-sites, &c., within municipal limits to be distinguished from lands forming part of public streets.

13. "Public streets" within municipal limits, "not being portions of provincial high roads or trunk roads specially reserved by Government," vest under section 17, clause (*f*) of the Bombay District Municipal Act in the municipality. The word "streets" must be understood with reference to the definition of that word in section 3 of the Act. It does not include building-sites and plots of open ground which have not been dedicated to public use. Such sites and plots, unless they have already been transferred to the municipality, vest in Government.

In an irregular street or road of varying width, small pieces of ground between the houses and the roadway should be recognized as forming part of the street and therefore vesting in the municipality, unless private individuals have rights thereto. But separate vacant sites between the houses do not vest in the municipality even though they be unenclosed, unless they have been transferred to the municipality by Government.

Questions of rights between Government and municipality how to be dealt with.

When the right to any piece of ground is in dispute between a municipality and the Government, the Collector shall endeavour to decide the dispute in accord-

ance with the foregoing principles. If the Collector is in doubt, or if the municipality does not accept his decision, the case shall be referred through the Commissioner for the orders of Government.

Reservation of mines and mineral.

14. The right of Government to mines and mineral products in all unalienated land having been expressly reserved by section 69 of the Land Revenue Code, the same reservation should be made in every alienation that may hereafter be made in the following terms, or in terms to the same effect (namely):

"This grant is made subject to the reservation of the right of the Secretary of State for India in Council to all mines and mineral products, and of full liberty of access for the purpose of working and searching for the same with all reasonable conveniences."*

(3) *Grant of Occupancies.*

Occupancies are of two kinds.

15. Occupancies are of two classes, *viz.*, (*a*) occupancies of land to which a survey settlement has been extended, and (*b*) occupancies of land to which a survey settlement has not been extended. The rules concerning each of these classes are given below separately, but are followed by some (*c*) general rules applicable to both: †

(*a*) *Land to which a Survey Settlement has been extended.*

Occupancy of survey numbers how to be disposed of.

16. The occupancy of any unoccupied survey number not assigned for special purposes may, at the Collector's discretion, be granted to such person as the Collector deems fit either upon payment of a price fixed by the Collector, or without charge, or be put up to public auction and sold, subject to his confirmation, to the highest bidder.

---

*See Appendix L. for correspondence on the subject of reservation of mines and minerals.

†1. It was not the intention of the Legislature to interfere with the right of an Inámdár to give out unoccupied land in his village or holding for cultivation, or to accept the relinquishment of the same from the occupant, or to exercise the power referred to in section 71 of the Land Revenue Code. (G. R. 5730 of 1st Oct. 1881.) *See* also notes to Rules 32 and 74 of these Rules.

2. There is no objection to the powers contemplated in clauses (*a*) and (*b*) of section 88 of the Revenue Code being conferred upon the Inámdár at once, but none of the powers mentioned in clauses (*c*) to (*f*) of that section can be conferred until a survey settlement has been extended to his village under section 216 of the Code (*vide* the proviso to section 88).

The first step, if the Inámdár is to be invested with any powers under clauses (*c*) to (*f*), is for Government, under section 216 of the Code, to authorize the extension to the Inámdár's village (by notification in the form given in the margin) of the provisions of Chapters VIII to X of the Code which he may desire to have so extended, or of such of them as Government think fit to extend. Section 112 must, of necessity, be amongst the number of the sections to be so extended, when a survey settlement "made, approved and confirmed" under the authority of the Governor in Council, is already in force in the village. And when the existing assessments have not yet been declared by Government to be fixed for a term of years, sections 102 and 103 must of necessity also be included, in order that Government may have power at once to declare them to be so fixed and that the survey settlement may be formally introduced.

Form.

"In exercise of the power conferred by section 216 of the Bombay Land Revenue Code, 1879, the Governor in Council is pleased to authorise the extension of the provisions of sections of the said Code to the village of in the táluka of the district.

By order, &c."

When the above notification has been issued, and when, if necessary, an order has been issued under section 102 and proceedings have been taken under section 103, the requirements of the proviso to section 88 will have been satisfied.

The powers which Government may then deem it fit to confer upon the Inámdár or upon any agent of his may be given, not by notification, but by a commission in the form of Schedule F. of the Code. If powers are conferred under clauses (*a*) and (*b*) of section 88 of the Code at once, without waiting for a survey settlement to be extended to the village under section 216, they, too, must be given by a commission. (G. R. 1338 of 8th March 1881.)

When the final bid at any such auction is for a sum not exceeding Rs 50, the power of confirming the sale may be delegated by the Collector, in his discretion, under section 12 of the Land Revenue Code, to the Mámlatdár.

When special conditions may be annexed to the occupancy of a survey number.

17. If the survey number is to be appropriated for purposes of agriculture, the Collector shall not annex any special condition to the occupancy without the previous sanction of the Commissioner. In any other case the Collector shall annex such conditions thereto as may be directed by Government, or, in the absence of any order of Government, may annex such conditions thereto as he shall think fit, subject to the control of the Commissioner.

(Notn. No. 4892, *B. G. G.*, 1887, Pt. I., p. 651.)

Survey number not already assessed to be assessed before occupancy is granted.

18. If the survey number has not already been assessed, it shall be assessed by the Collector (after reference to the Survey Department, if survey operations are still in progress in the district,) at the rates placed on similar soils in the same or neighbouring villages; and the assessment so fixed shall hold good pending the period for which the current survey settlement for the village in which the land is situated has been guaranteed, and shall be liable thereafter to revision at every general survey settlement of the said village.

When survey numbers may be given at reduced assessment.

19. If it shall appear that the bringing of any survey number under cultivation will be attended with large expense, or if for other special reasons it shall seem desirable, it shall be competent to the Collector, with the previous sanction of the Commissioner, to give the numer revenue-free or at a reduced assessment for a certain term, or revenue-free for a certain term and at a reduced assessment for a further term, and to annex such special conditions to the occupancy as the outlay or other reasons aforesaid may seem to him to warrant: Provided always that, on the expiry of the term or terms so agreed upon, the land shall be liable to full assessment under the rules then in force for lands to which a survey settlement has been extended.*

As a rule no survey number to be given for less than its proper assessment.

20. Except under the provisions of the last preceding rule, or, in places in which special rules for the encouragement of the cultivation of waste lands may be sanctioned by Government, under the provisions of such rules, no survey number on which the assessment has been fixed is to be let for less than the amount of such asessment, in consequence of its having been long waste or for any other reason whatever.

---

* For form of lease on special terms to be granted under Rule 19, *see* G. R. No. 7033, dated 3rd September 1884, at end of Appendix Q to this part (pages 70, 71.)

(b) Land to which a Survey Settlement has not been extended.

Grants of salt-marsh lands for reclamations.

21. The reclamation of salt land or land occasionally overflowed by salt water, provided it is not required or likely to be required for salt manufacture, should be encouraged whenever there is a reasonable prospect of success, and the occupancy of such land may be granted by the Collector subject to the confirmation of the Commissioner, on the following maximum terms, and with such modifications in particular cases as may be deemed fit:— (Notn. No. 3318, *B. G. G.*, 1890, Pt. I., p. 465.)

(1) no revenue to be charged for the first ten years;

(2) revenue at the rate of four annas per acre to be levied for the next twenty years on the whole area granted, whether reclaimed or not;

(3) at the end of thirty years the land to be assessed to the land revenue and to be continued under the rules then in force for land to which a survey settlement has been extended;

(4) any portion of the land appropriated for public roads to be exempt from revenue;

(5) if half the area is not reclaimed at the end of five years, and the whole at the end of ten years, or if the reclamation is not carried on with due diligence within one year, the grant to be cancelled, but may be re-granted at the discretion of the Collector.

Occupancy of melon-beds.

22. The occupancy of land in the beds of rivers used for growing melons shall be sold* annually by auction to the highest bidder for the term of one year or such further period as the Collector thinks fit, the bidders being informed that under Rule 53 such land will not be held liable for Land Revenue.

Occupancy of building-sites.

23. The occupancy of building-sites shall ordinarily be sold by auction to the highest bidder whenever the Collector shall be of opinion that there is a demand for such sites; but the Collector may, in his discretion, dispose of the occupancies of such sites by private arrangement, either upon payment of a price fixed by him, or without charge, as he shall deem fit.

Auction-sales of occupancies of building-sites where to be held and by whom to be confirmed.

24. Auctions held under the last preceding Rule shall ordinarily be conducted in the town or village in which the land of which the occupancy is to be disposed of is situated, and the power of confirming

* The Collector may use his discretion in dealing with applications for such sales. (G. R. 8931, R. D., dated 21st December 1886.)

the sales shall ordinarily be delegated by the Collector, under section 12 of the Land Revenue Code, to the Mámlatdár or Mahálkari, but on these points the Collector may in special cases give such directions as he shall deem fit.

Periods for which and conditions on which occupancies of building-sites are to be disposed of.

25. Occupancies of building-sites shall ordinarily be disposed of for ninety-nine years, but subject to an annual ground-rent, the amount of which should be regulated by the value of the site, provided that—

(1) when, as in the case of building-sites at hill-stations, Government have sanctioned special rules, such rules shall be followed;

(2) the occupancy of land near a railway-station or in any situation where it is likely to become valuable or to be required for any public purpose, shall not be disposed of for long periods; and the occupancy of land near a railway-station shall not be disposed of without the previous sanction of the Commissioner, nor while the line is under construction without first consulting the railway authorities;

(Notn. No. 4892, *B. G. G.*, 1887, Pt. I., p. 651.)

(3) the occupancy of land of the nature described in the last clause or of land in towns and other places of considerable size or of increasing importance shall be disposed of subject to such conditions as to the style and size of the buildings to be erected thereupon as Government shall in any case direct.

(4) in any case the ground-rent instead of being rendered annually may, with the consent of the Collector, be paid by the occupant at the time of the grant of the occupancy, or at any subsequent time, in a lump sum at once for the whole period of the lease or for the whole of the still unexpired period of the lease, as the case may be, a note of such payment being made at the foot of the lease or agreement which shall be executed in respect of the occupancy under Rule 31 or 32.

(Notn. No. 4067, *B. G. G.*, 1883, Pt. I., p. 433.)

In certain cases lands must be marked out into lots and maps prepared.

26. When the occupancy of land, such as is described in clauses (2) and (3) of the last preceding Rule is to be disposed of, the land should in the first instance be marked out in convenient lots and mapped in such a manner that persons desirous of becoming occupants may clearly know what plots are available.

Due provision should be made in the plans for roads and approaches and access of air and light, and careful regard should be had to sanitary requirements.

Substitution of a new village-site for an old one.

27. Whenever a new village site is established in lieu of a former one, which it is determined for any reason to abandon, the new site shall be carefully marked out and

mapped in the manner prescribed in the last preceding section, and an agreement shall be taken, in the form of Appendix C., from each registered occupant previous to his being permitted, under section 60 of the Land Revenue Code, to enter upon occupation of any lot.

Establishment of entirely new village-sites.

When an entirely new village-site is established, or an addition is made to an existing site, the same provisions shall be observed for demarcating such new or additional site, but the disposal of the lots therein will be made under the rules ordinarily applicable to the disposal of building sites.

Proprietary right in building-sites not to be parted with.

28. In every case of the disposal of a building-site the occupancy only and not full proprietary right in the soil is to be granted.

Disposal of occupancy of land to which foregoing rules are inapplicable.

29. The occupancy of land to which none of the foregoing Rules is applicable, and concerning which no special orders have been passed by Government, shall be disposed of in such manner, for such period and subject to such special conditions, if any, as the Collector, subject to the control of the Commissioner, shall deem fit.

(c) General Rules applicable to all Occupancies.

Upset-price to be placed on all occupancies sold by auction.

30. Whenever an occupancy is sold by public auction, an upset-price shall, if the Collector thinks fit, be placed thereon in order to guard the revenue against loss and to prevent applications being made for such occupancies when they are not really wanted.

When leases are to be granted.

31.* Whenever the occupancy of land is granted on special terms, whether as to the amount of assessment or as to the conditions of the

---

* Memo. from the L. R. :—

Lessees holding over.—"The Transfer of Property Act, 1882, has not been extended to this Presidency, but its section 116 expresses what is in reality the general law as to the effect of a lessee holding over. His lease becomes thereby renewed from year to year and six months' previous notice to quit may be given for the purpose of terminating the lease at the close of any year of tenancy.

"2. But in the case of leases which entitle the lessees to a renewal of their lease on its expiration 'on the same terms as are herein contained or on such other terms as shall then be agreed upon,' the proper course will be for the Collector to serve each one with a notice reminding him that his lease has expired and that as he is holding over he is liable to be ejected at the close of the current year on receipt of six months' notice, that he should consider the said notice to be a notice to quit at the end of the current year (care being taken that six months of the current year have still to run when it is served) and that the notice will be enforced unless in the meantime he applies for a renewal of the expired lease when such his application will be considered. If an application for a renewed lease is made there will be no objection, I presume, to its being granted." (G. R. No. 2028, 10th March 1883, R. D.)

tenure, a written lease* shall be executed by the Collector clearly setting forth the terms of the grant.

Every such lease shall be in a form sanctioned† by Government, and, if no suitable form has been already so sanctioned, reference shall be made and a sanctioned form obtained before the lease is executed.

A duplicate shall be kept of every lease executed under this Rule.‡

Agreement to be executed by the intending occupant, when no lease is granted.

32. In every case in which a lease is not executed under the last preceding Rule, an agreement, in the form of Appendix D., shall be taken from the person who is to become the registered occupant, and every such agreement shall be endorsed by two respectable witnesses and by the patel and village accountant of the village in which the land to which it relates is situate, to the effect prescribed below the said form; and the Mámlatdár or Mahálkari who takes the said agreements will be held responsible for exercising due care§ in ascertaining the identity of the persons signing the same, and their fitness to be accepted as occupants responsible for the payment of land revenue, notwithstanding that the agreements have been duly endorsed as hereinbefore required: Provided always that no such agreement shall be necessary when an agreement, in the form of Appendix C., is taken under Rule 27.

All agreements taken under this Rule or under Rule 27 shall be kept in separate files in the records of the Mámlatdár or Mahálkari.‖

Village accountants to prepare agreements under Rules 27 and 32 without charge, when so desired.

33. It shall be the duty of every village accountant, if so desired by any occupant in his village or by any person about to become an occupant of land in his village, to prepare any agreement that

*Under section 8 of the Indian Stamp Act, 1879, the Governor General in Council has exempted both prospectively and retrospectively all leases granted under Rule 31 from payment of stamp duty. (Notification No. 5855, *B. G. G.*, 1889, Pt. I., p. 1008.)

†Leases which require alterations in, or additions of special clauses to, the sanctioned form should be prepared by the Solicitor to Government at the expense of the lessees. (G. R. No. 3208, R. D., dated 16th May 1882.)

‡G. R. No. 8959, R. D., dated 6th December 1883, prescribes a form of register in which all leases granted under this rule are to be entered.

§His Excellency the Governor in Council is pleased to direct that Aval-kárkúns may, during the absence of Mámlatdárs from head-quarters, accept on their behalf notices of relinquishment under section 74 of the Land Revenue Code and agreements under Rules 32 and 75 of the Rules framed thereunder. Whenever Mámlatdárs accept, without further inquiry, notices of relinquishment and agreements executed and duly endorsed by an Aval-kárkún, they will be held by Government to have exercised the due care enjoined by Rule 76 of the Rules framed under section 214 of the Land Revenue Code. (G. R. 1743, dated 2nd March 1889, R. D.)

‖ As to alienated villages, *see* note to Rule 74 of these Rules.

may be necessary under either Rule 27 or Rule 32 without fee or charge of any kind.

A village accountant who prepares any such agreement shall affix his signature beneath the words "written by" on the lower left-hand corner of such agreement.

Form of written permission to occupy under section 60.

34. The permission in writing to be given by a Mámlatdár or Mahálkari under section 60 of the Land Revenue Code to enable an intending occupant to enter upon occupation shall be in the form of Appendix E.

No such permission shall be given until either a lease or an agreement has been duly executed and delivered under either Rule 31 or Rule 32 or under Rule 27, as the case may be.*

(d) *Special Rules for Sites of certain Cities and Towns.*

Special rules for the sites of Ahmedabad, Broach, Surat, Ránder and Bulsár.

34*A*. Except as is otherwise provided in Rule 34*G*., nothing in Rules 15 to 34, both inclusive, shall be applicable to the grant of occupancies of lands within the sites of the cities and towns of Ahmedabad (inclusive of the suburb of Saraspur), Broach, Surat, Ránder and Bulsár. (Notn. No. 8325, *B.G.G.*, 1885, Pt. I., pp. 1203-4.)

To the said lands the provisions of the next following Rules 34*B*. to 34*J*., both inclusive, shall apply.

Disposal of strips of land adjacent to existing building sites.

34*B*. Whenever the holder of a building-site within any of the said sites desires to acquire any small strip of ground belonging to Government which is adjacent to his site and which could not reasonably be dis-

---

* Memo. from the L. R.:—

"The rules relating to city surveys and to lands to which such surveys had been extended, which were in force when the Bombay Land Revenue Code became law, were specially saved by paragraph 3 of section 2 of that Code. Unless, therefore, they have since been superseded by some new rules or orders passed under the Code they are still in force.

"2. The general rules and orders prescribed by Government under section 214 of the Code in Notification No. 7368 of 6th December 1881 (*Bombay Government Gazette* for 1881, page 795), were made in supersession of all existing orders *on the same subjects*. Anything contained in those general rules and orders which is applicable to city surveys and the lands affected by them must therefore be deemed to supersede previous rules or orders on the same subjects, but except to such extent as they may have been thus superseded the old rules and orders are still in force.

"3. So much of Nos. 16—20 and 30—34 of the general rules and orders framed under section 214 of the Land Revenue Code as is applicable to such lands as come under a city survey must be deemed to apply to them and to supersede any previous rule inconsistent herewith. I do not think it will be found that the previous rules and orders applicable to city surveys have been materially affected; but if they have, means can be taken for saving them from supersession as regards any essential point if the City Survey Officers bring the matter to notice." (G. R. No. 2218, 17th March 1883, R.D.)

posed of by the Collector as a separate site, the Collector may, if he thinks fit and notwithstanding anything contained in Rule 9 to the contrary, dispose of such strip to the said holder by sale, subject to the same tenure and to payment of ground-rent or assessment at the same rate, if any, on which he holds the said site.

Mode in which other lands may be disposed of.

34*C*. Except as provided in the last preceding rule, the Collector shall not:

(*a*) dispose of the proprietary right in the soil of any land, within the site of any of the said towns or cities, or

(*b*) grant the occupancy of any land therein for any greater period than is prescribed in Rules 34*E*., 34*F*. and 34*G*., respectively.

Occupancies may be granted for agricultural or non-agricultural purposes.

34*D*. The occupancy of any unoccupied land within the site of any of the said towns or cities not assigned for special purposes may, at the Collector's discretion, be granted to such person as the Collector deems fit either for purposes of agriculture only or for other purposes.

Terms on which building-sites may be disposed of.

34*E*. The occupancy of land for building-sites shall be granted under written leases at a ground-rent of two pies per square yard per annum on such terms and in such form as shall from time to time be approved by Government, for terms expiring on the date fixed in this behalf by Government for each city or town.

Terms on which lands intended for future building-sites may be temporarily disposed of.

34*F*. The occupancy of land eventually intended for building-sites, but of which the immediate disposal for the said purpose appears to the Collector to be undesirable, may be let, under written leases in a form approved by Government, for short terms not exceeding in any case seven years, at a ground-rent of one anna per square yard per annum. It will be a condition of such leases that no permanent building shall be erected upon the land, or, which amounts to the same thing, that at the end of the term the land shall be restored by the lessee in the same condition in which he takes it.

Terms on which lands may be disposed of for agricultural purposes only.

34*G*. The occupancy of land granted by the Collector for purposes of agriculture only shall be granted for terms of one year only.

An agreement in the form of Appendix D shall be taken from every person who is to become a registered occupant of land under this section, and the provisions of Rule 32 shall be applicable to every agreement so taken.

This rule shall not be deemed to apply to agricultural lands which, though situated within the site of any of the towns or cities aforesaid, are subjected to a survey settlement similar to that applied to lands of the same description outside the said sites. Such lands shall be subject to the same rules as those last named.

Upset price fixed for certain occupancies.

34*H*. Except under special circumstances, no sale of an occupancy under Rule 34*E* shall be made by the Collector for less than one rupee per square yard.

Method of disposing of occupancies.

34*I*. The occupancy of lands within the sites of the towns and cities aforesaid shall ordinarily be sold by auction to the highest bidder; but the Collector may in his discretion sell the same by private arrangement.

Form of written permission to occupy.

34*J*. The permission in writing to be given by a Mámlatdár or Mahálkari under section 60 to enable an intending occupant to enter upon occupation shall be in the form of Appendix E.

No such permission shall be given until either a lease or an agreement has been duly executed and delivered under Rule 34*E* or 35*F* or 34*G*, as the case may be.

In each of the cities of Ahmedabad, Surat and Broach the power of a Mámlatdár under section 60 is hereby conferred, under section 19, on the Deputy Collectors in charge of the City Survey.

(4) *Disposal of minor rights.*

Sale of produce of Government trees.

35. The produce of trees belonging to Government may be sold by auction annually.

When any such trees are sold under section 41 of the Land Revenue Code, the sale shall be by auction or otherwise as the Collector may direct. (Notn. No. 1239, *B. G. G.*, 1888, Pt. I., p. 149.)

*Grazing and other similar produce to be ordinarily disposed of by sale for periods of one year.

36. The grazing or other produce of all unoccupied land vesting in Government, whether a survey settlement has been extended to such land or not, and whether the same be assessed or not, and of all land especially reserved for grass or for grazing (except land assigned to villages for free pasturage) may be sold by public auction year by year, either field by field or in tracts, and at such time as the Collector shall determine: Provided that the purchaser's rights over such land shall entirely cease

*His Excellency the Governor in Council is pleased to authorize the Collectors of Sátára, Poona and Khándesh to assign to the Mahálkaris, &c., in their respective districts the power to sell by auction the grazing of all unoccupied land vested in Government within their charges and to confirm the sale when the sum finally bid is below Rs. 50. (G. R. 5431, dated 3rd July 1885, R. D.)

on the dates respectively fixed for the several districts and provinces in the following table, unless, under special circumstances, the Collector shall deem it necessary to extend the time so fixed for any period not exceeding one month :—

Collectorate.	Waste assessed Dry-crop Land.	Waste assessed Rice Land.	Reserved Kurans and unassessed Waste.
Kaládgi	31st March ...	31st March ...	1st May.
Sátára	Do. ...	Do. ...	Do.
Belgaum...	Do. ...	1st December.	Do.
Dhárwár	Do. ...	Do. ...	Do.
Kánara	Do. ...	1st October...	Do.
Other Deccan Collectorates	Do. ...	31st March ...	Do.
Konkan Collectorates...	Do. ...	Do. ...	31st December for cutting, and up to the monsoon for grazing.
Gujarát Collectorates ...	Do. ...	Do. ...	1st May.

Commissioner may sanction disposal of grazing, &c., in any other manner.

37. The Commissioner may, if he thinks fit, sanction the disposal of the grazing or other produce of any land, specified in the last preceding Rule, otherwise than by sale in public auction and for any term not exceeding five years.

Disposal of earth, stone, &c., by the Collector.

38. The Collector may, at his discretion, sell by public auction, or otherwise dispose of the right to remove earth, stone, kankar, sand, muram or any* other material which is the property of Government for such periods in such quantities and on such terms as he thinks fit: Provided that such sale or other disposal be made subject to the privileges conceded by the two next following Rules.

The rate charged by the Collector under this Rule, when the right in question is not put up for sale by public auction, may be either a lump sum, or so much per cubit foot of excavation, or, in the case of a Railway Company requiring land for excavating ballast, so much per mile of the railway-line for which ballast is obtained, or otherwise as the Collector thinks fit.

Villagers may remove earth, stone, &c., for their own use without fee with the permission of the Police Patel.

†39. Any person may, within the limits of the village in which he resides, remove earth, stone, kankar, sand, muram or other material from the bed of the sea or from the beds of creeks, rivers and nálas, or from any unassessed waste land not assigned for special purposes, for his own *bonâ-fide* domestic or agricultural purposes, without payment of fee,

* The right to collect and remove sand in creeks is sold by Government. The right to collect and remove shells from the bed of a creek is equally saleable. (G. R. No. 2143, dated 18th March 1886, R. D.)

† It would be inadvisable as injurious to sanitation to permit villagers to remove earth from village-sites or from localities in the vicinity of villages. (G. R. No. 14, dated 5th Jan. 1886, R. D.

on obtaining the written permission of the Police Patel.

Potters and brick and tile-makers shall be entitled to the same privilege for the *bonâ-fidé* purposes of their trade as well as for domestic and agricultural purposes; but they must first obtain sanction of the Mámlatdár in all cases where an extensive trade is carried on and where excavation of the soil is likely to destroy valuable buildings or land required for public purposes.

If the Police Patel shall refuse permission when the same is applied for under this Rule, an appeal shall lie to the Mámlatdár. But, in such cases as he shall think fit, the Collector may prohibit the Mámlatdár, or the Police Patel, from giving permission without obtaining his previous sanction.

Removal of earth, &c., from village tanks.

40. Any person may, with the sanction of the Police Patel, take free of all charge from village tanks as much earth, stone, kankar, sand, muram or other material as he requires, provided that no stones shall be removed that may have fallen in from the banks of built tanks, and that no excavation shall be made within ten cubits of the foot of the embankment of any such tank.

Collector may permit removal of earth, stone, &c., without charge for works of public utility.

41. The Local Funds, Public Works, and other public Departments and Municipalities may, with the permission of the Collector*, and subject to his supervision, remove earth, stone, kankar, sand, muram and any other material from the bed of the sea or from the beds of rivers, creeks, nálas or public tanks, or from any unassessed land, or any unoccupied assessed land not assigned for special purposes, for works of public utility without payment, whether such works be constructed departmentally or by contract.

(5) *Miscellaneous.*

Sales under these Rules how to be conducted.

42. Every sale by auction, under these Rules, or in pursuance of any of the provisions of the Land Revenue Code, shall be conducted, so far as may be, in accordance with sections 165, 166, 170 to 177, both inclusive, and 180 of the said Code. The proclamation and written notice of sale required to be issued under sections 165 and 166 of the said Code shall be in one of the forms contained in Appendix M, or as near thereto as may be :— (Notn. No. 1239, *B. G. G.*, 1888, Pt. I., p. 149). (Notn. No. 4297, *B. G. G.*, 1884, Pt. I., p. 417).

Provided that in conducting the following sales :

(*a*) Sales of the right of grazing and of the right to take or cut grass in waste lands; (Notn. No. 150, *B. G. G.*, 1889, Pt. I., p. 21).

(*b*) Sales of the right to take the fruit of specified Government trees for a specified period; and

---

* The Collector is not bound to give this permission in every case. (G. R. 7562 of 13th November 1888, R. D.) The power to give this permission may be delegated by the Collectors to Mámlatdárs. (G. R. 4191 of 23rd May 1884, R. D.)

(*c*) Sales of dead wood,—

the procedure shall be in accordance with such orders as may from time to time be made by the Collector, either generally or specially in this behalf, instead of the procedure prescribed in sections 165 and 166 of the Bombay Land Revenue Code.

IV.—ASSIGNMENT OF LAND FOR SPECIAL PURPOSES. [Section 38.]

Cattle-stands and dhobis' and potters' grounds.

43. Burial and burning grounds, spots near villages on which the village cattle stand, and lands for the use of village dhobis and potters should be assigned for these purposes respectively, according to the reasonable requirements of the villagers without charge.*

V.—ALLUVION AND DILUVION. [Sections 47 and 214 (*i*).]

Holders of land with shifting boundaries may enjoy up to such boundaries.

44. When a holding is bounded on any side by the bank or shore of a river,† creek or nála, or of the sea,‡ the holder will be permitted, subject in the case of unalienated holdings to such orders as may be legally passed under Rule 46, to occupy and use the land up to such bank or shore, notwithstanding that its position may shift from time to time.

Changes in holdings from alluvion and diluvion to be ascertained and recorded.

45. It shall be the duty of the village officers, subject to the orders of the Mámlatdár or Mahálkari and of the Collector or of the Assistant or Deputy Collector in charge of the táluka, to ascertain from time to time and to record the changes caused by alluvion and diluvion in every holding subject to such changes.

---

* The phrase "village cattle" does not include the cattle of any roving grazier who may choose to squat for a few months on the public ground of a village. (I. L. R. 2 Bom. 110.)

† Whatever may be the nature of the tenancy, the occupants of the land abutting on the stream, and not the Government, are entitled to the enjoyment and benefit of the water as it flows past. No doubt, all the occupants of land on the banks being equally entitled, each occupant or set of occupants is bound to use his right so as not materially to interfere with an equally beneficial enjoyment of it by the other occupants. An action will lie where the use by any of the occupants of the common right is unreasonable. But Government cannot arbitrarily curtail or interfere with, at any time during the occupancy, the enjoyment of the water by each occupant as it existed at the commencement of his occupancy and which must have constituted a most important consideration in fixing the amount of land assessment which each occupant agreed to pay. (Printed Judgments of 1882, p. 58. S. C. I. L. R. 7 Bom. 209.)

‡ The right of the public to fish in the sea, whether it and its subjacent soil be or be not vested in the Crown, is common, and is not the subject of property. This right in certain portions of the sea may be regulated by local custom. Members of the public exercising the common right to fish in the sea are bound to exercise that right in a fair and reasonable manner, and not so as to impede others from doing the same; and conduct which prevents another from a fair exercise of his equal right, if special injury thereby results to him, is actionable. I. L. R. 2 Bom. 19.

46. The village officers shall report to the Mámlatdár when the area of any newly formed alluvial land or island, or of any abandoned river-bed, to which the provisions of section 46 or of section 64 of the Land Revenue Code apply, exceeds the limit prescribed in those sections, and the Mámlatdár shall deal with it under the orders of the Collector or Assistant Collector in the manner prescribed in the said sections respectively.

The officer who does the *jamábandi* to give effect to provisions of sections 46 and 64.

Newly-formed alluvial lands and islands, and abandoned river-beds, to which the provisions of the said sections do not apply, may be disposed of by the Collector under the rules and orders applicable to unoccupied land belonging to Government.

Land to which sections 46 and 64 do not apply, to be disposed of by the Collector.

47.* Claims to decrease of assessment on account of diluvion under section 47 of the Land Revenue Code shall be heard and disposed of by the officer who makes the annual *jamábandi* settlement.

The officer who does the *jamábandi* to dispose of claims under section 47.

In order to provide against undue loss of revenue, care must be taken, whenever such claims are allowed, to trace out and assess the corresponding accretions of alluvial land, if any, in the same or in some other village.†

VI.‡—PURPOSES TO WHICH THE APPROPRIATION OF UNALIENATED LAND IS PROHIBITED. [Sections 48 and 214 (*c*) and (*i*).]

48. Land included as unarable in a survey number assessed for purposes of agriculture only may ordinarily be brought under cultivation without extra charge by the occupant of such number, or by any one claiming under him, but such cultivation is prohibited in the following cases (*viz.*) :—

Land occupied by a road or tank, &c., in an occupant's holding, may not be cultivated.

(*a*) when the land is occupied by a road or by a tank used for irrigation or for drinking or domestic purposes ;

(*b*) when the land is used as a burial-ground ;

---

* In all cases in which the area of a holding is less than half an acre, only the one condition should be required of the loss by diluvion exceeding one-tenth of the holding affected (G. R. No. 2771 of 12th April 1886, R. D.)

† For rules regarding alluvion and diluvion owing to changes in the course of the river Indus, or other waters, in the Province of Sind, *see* Part XVIII (5) of this Compilation.

‡ Paragraph 2 of section 48 of the Land Revenue Code does not apply to lands assessed under a survey settlement before the date of the Land Revenue Code. The words of the paragraph 'the assessment fixed under the provisions of the Act' are specific, and section 112 declaring existing survey settlements 'to be in force subject to the provision of this Act' does not make the assessment fixed under such existing settlements an assessment fixed under the provisions of the Land Revenue Code. (G. R. No. 4758 of 3rd July 1886.)

(*c*) when the land has been assigned for the use of the village potters, or other public purposes:

Provided that this prohibition shall not apply in the case of a tank, when such tank is used for irrigation only and waters only land which is in the sole occupation of the occupant, or when the privilege of cultivating the dry bed of the tank has been specially conceded to the occupant.

Occupant of an agricultural holding may not destroy or injure the land for cultivation.

49. No occupant of land assessed or held for purposes of agriculture only and no person claiming under any such occupant may make any use of the land so as, in the opinion of the Collector, thereby to destroy or materially injure the land for cultivation.

But earth, stone, &c., may be removed for the occupant's own use.

But, provided this Rule be not infringed, the occupant and any person lawfully in possession of any such land may remove earth, stone, kankar, sand, muram or any other material of the soil thereof for his own *bond fide* domestic or agricultural purposes without previous permission and without payment of fee.

When compounds, &c., may not be used for agriculture.

50. Compounds to bungalows and patches of open ground surrounding houses, not assessed for purposes of agriculture, may not, if the Collector shall on sanitary grounds think fit in any case so to direct, be appropriated to purposes of agriculture, but the grass shall be kept, cut or grazed by cattle.

(Notn. No. 4230, *B. G. G.*, 1888, Pt. I., p. 544.)

Prohibition of growth of sugarcane in and around Poona.

50A.* No occupant of any land within the limits of the city or suburban municipality of Poona or of the cantonment of Poona or within one mile from the said limits may grow sugarcane therein, if the Collector, having regard to the situation and extent of such land or to any other material consideration affecting the same, and after consulting the Sanitary Commissioner, shall be satisfied that the growth of sugarcane in such land is dangerous to the health of residents within the area to which this rule extends, and shall, on this ground, by order in writing addressed to the occupant of the land, prohibit the cultivation of the said crop therein:

Provided that no order, issued by the Collector under this rule in respect of any land in which a sugarcane crop is growing at the date of such order, shall come into effect until two years after the time when the said crop was sown.

---

* Occupants of lands irrigated from old wells are exempted from the operation of Rule 50A. (G. R. No. 3038, 2nd May 1890, R. D.)

51. No unalienated land within the site of any city, town, or village may be excavated, without the previous permission, in writing, of the Collector, for any purpose except the laying of foundations for buildings, the sinking of wells and the making of grain-pits. When permission is granted by the Collector to excavate any such land as aforesaid for any purposes other than those above mentioned, such excavation may not be made otherwise than in accordance with such terms as the Collector shall in each case think fit to prescribe.

Excavation of unalienated land within site of village, town, or city prohibited except for certain purposes.

52. No occupant of any land may suffer such land to be or to become overgrown with prickly-pear or rank grass so as to become dangerous to the health or safety of the neighbourhood.

Growth of prickly-pear on land prohibited.

VII.—ASSESSMENT OF LAND REVENUE.

[Sections 52, 100 and 214 (*d*).]

(1) *Unsurveyed Lands.*

53. No assessment shall be placed on land in the beds of rivers used for growing melons. The land revenue chargeable on such land shall be deemed to be included in the price of the occupancy thereof obtained in auction under Rule 22.

Melon-beds not to be assessed.

(2) *Surveyed Lands.*

54. Compounds surrounding bungalows and patches of open ground surrounding houses up to such limit* of area as Government may from time to time fix for each district shall be subject, as regards their assessment to the land revenue, to the same rules as are applicable to the land on which the bungalows or houses stand.

Assessment of compounds, &c.

---

* Memo from the L. R :—

"No. 54 of the Land Revenue Code rules gives effect to a previous Resolution of Government. The ground on which *pardi* lands were exempted from assessment, if they did not exceed a quater of an acre, was that they were 'considered to form part of the village-site'. The area in excess of a quarter of an acre was assessed as agricultural land. In the above rule, therefore, drafted by the committee appointed by Government to prepare a body of rules under the Code, it was laid down that such lands 'shall be subject, as regards their assessment to the land revenue, to the same rules as are applicable to the land on which the houses stand.' If the latter land is free from assessment, so will also the *pardi* land be, up to such limit as Government fixed for each district. The provision that the limit should be fixed by Government for each district was inserted because it was understood that the limit of a quarter of an acre had not been universally adopted." (G. R. No. 3171, 23rd April 1883, R. D.)

The maximum admissible area of unassessed Párdi land may be taken to be one-eighth of an acre in the Konkan and one-fourth of an acre elsewhere, but the maximum need not necessarily be allowed and regard should be had to local custom. When a larger area has been sanctioned by adequate authority it may be continued subject to future revision. The matter should be specially noticed in revision settlement reports. (G. R. No. 8293, R. D., of 12th November 1883.)

Survey Rules.

55. The following Rules, unless otherwise directed by Government, shall be observed in the conduct of revenue surveys of lands used, or which may be used, for the purposes of agriculture.

(Notn. No. 4062, B. G. G., 1889, Pt. I., p. 509.)

(1) (*a*) Every occupancy separately recognized in the village accounts, if not less in extent than the mimimum for survey numbers fixed in relation to such land under section 98, shall be separately measured, classified and assessed, and defined by boundary marks, and shall be made a survey number.

(*b*) Every occupancy separately recognized in the village accounts which is less in extent than the mimimum for survey numbers fixed under section 98 in relation to such land, shall, unless the Survey Commissioner otherwise directs, be separately measured, classified and assessed and defined by boundary marks, and the Survey Commissioner may, at any time either by general order or in any particular case or class of cases, direct that such operations shall not be proceeded with unless and until an application accompanied with prepayment of all the costs of such operations, or such portion thereof as the Survey Commissioner may direct, has been presented by the parties interested.

(Notn. No. 5546, B. G. G., 1885, Pt. I., p. 868.)

Recognized shares of survey numbers so defined by boundary marks shall be called "subordinate survey numbers", but shall be regarded for all purposes as recognized shares of survey numbers.

(2) When an occupancy is held by two or more co-occupants in shares, and each of the said occupants has a separate account to which he pays his quota of the land-revenue due in respect of the occupancy separately, but the proper share of each occupant has not been permanently divided from the rest, the entire occupancy shall be comprised in a survey number; and each co-occupant's share therein shall be recorded as a recognized share of such survey number, together with the proportion, reckoned in annas, which such share bears to the whole survey number and the assessment of such share.

(3) All measurements shall be recorded in a book to be kept in such form as shall be prescribed by the Survey Commissioner for each survey. The said books when prepared shall be preserved as a record of the survey.

(4) The original measurements made by the subordinate survey officers employed for the purpose shall be tested by the officers in charge of measuring establishments in such manner and to such extent as the Survey Commissioner shall deem sufficient.

(5) Village maps shall be prepared under the orders of the Survey Commissioner showing each survey number. The positions of the boundary marks of each survey number shall also be shown on the said maps.

(6) For the purposes of assessments all land shall be classed with respect to its productive qualities. The number of classes and their relative value reckoned in annas shall be fixed under the orders of the Survey Commissioner with reference to the circumstances of the different tracts of country to which the survey extends and to the nature of the cultivation.

(7) Every classer shall keep a field-book and record therein the particulars of his classification of each survey number and subordinate survey number and the reason which led him to place it in the particular class to which in his estimation it should be deemed to belong. Such field-books shall be preserved as permanent records of the survey.

(8) A test of the original classification made by the subordinate officers employed for this purpose shall be taken by the officers in charge of classing establishments, in such manner and to such extent as may be directed by the Survey Commissioner. The said test shall be an independent test, that is to say, it shall be made by the testing officer in entire ignorance of the original classer's proceedings or records until it has been completed and its results have been finally determined, when only the original classing valuation and the test valuation shall be compared and their separate results recorded.

(9) When rates of assessment have been sanctioned by Government, the assessment to be imposed on each survey number or subordinate survey number shall be determined according to the relative classification value of the land comprised therein.*

(10) Matters of detail not provided for in the foregoing Survey Rules shall be determined in each survey in accordance with such general or special orders as the Survey Commissioner acting under the general control of Government shall from time to time deem fit to issue.

(3) *General.*

56. When unalienated land assessed or held for purposes of agriculture only is subsequently appropriated† to any purpose unconnected with agriculture, the assessment upon the land actually so appropriated shall be altered in

Alteration of assessment when land assessed or held for agricultural purposes is appropriated to non-agricultural purposes.

*1. A special report for inám villages in tálukas already settled may be dispensed with. The rates sanctioned for adjacent Government villages previously settled may be held applicable to inám villages coming under settlement at any time after the settlement of the mass of the táluka. This order may be deemed sufficient sanction within the meaning of sections 102 and 103 of the Land Revenue Code. (G. R. 6386 of 6th December 1880.)

2. Before the survey rates are introduced in an inámdár's village, an agreement should be taken from the inámdár that he will pay the village officers according to the scale in force in Government villages, in order to ensure the independence of and payment of remuneration to the village officers. (G. R. 7322 of 3rd December 1881.)

† The Collector need not interfere in any way with an occupant merely gathering loose surface stones off a field, whether he sells them or not. (G. R. 4788 of 11th June 1885, R. D.)

accordance with the provisions of paragraph 2 of section 48 of the Land Revenue Code and fixed at the following rates :—

If the village, town or city in which the land is situated is classed, under Rule 66, in Class I	Rs.	10	per acre, or ten times the assessment for agricultural purposes, whichever be the greater.
" " II	Rs.	5	or five times do.
" " III	Rs.	2	or three times do.
" " IV	Re.	1	or double the assessment.

If the village, town or city in which the land is situated is classed, under Rule 66, in Class V, no alteration in assessment shall ordinarily be made.

(Notn. No. 8325, *B. G. G.*, 1885, Pt. I., p. 1203.)

Special rate for lands within the sites of certain cities and towns.

56*A*. Nothing in the last preceding rule shall be applicable to lands within the sites of the cities and towns of Ahmedabad, Broach, Surat, Ránder and Bulsár.

In the said sites the rate to be imposed upon land appropriated as aforesaid shall be two pies per square yard.

VIII.—REGISTER OF ALIENATIONS.

[Section 53.]

Form of register

57. The Register of Alienations to be kept under section 53 of the Land Revenue Code shall be in the form of Appendix F.

IX.—DISPOSAL OF FORFEITED HOLDINGS.

[Sections 56 and 214 (*e*) and (*i*).]

Holdings when to be declared forfeited.

58. Whenever it shall appear to the Collector that an arrear of land revenue cannot be readily recovered by any of the means provided in Chapter XI of the land Revenue Code other than the forfeiture of the holding in respect of which the arrear is due, he shall declare such holding to be forfeited to Government. But care should be taken that such declaration is not made except in cases of necessity.*

---

* Whenever the land revenue is in arrear, Government is entitled to sell the land and realize its due, whoever is the defaulter. (I. L. R. 5 Bom. 74.)

2. Section 86 of the Land Revenue Code, 1879, expressly provides that the recovery of dues from inferior holders shall be made under the same rules and in the same manner as prescribed in Chapter XI for the realization of arrears due to the Government. An exception only is made in the case of section 137, in which the paramount right of Government to recover its land revenue over all other claims is recognized ;(1) but every other rule in Chapter XI is applicable. Accordingly, where section 153 provides that the Collector may declare the occupancy in respect of which an arrear of land revenue is due to be forfeited to the Government, so he may declare a holding with which he is dealing under section 86 to have reverted to the superior holder. (G. R. 3089 of 30th May 1881.).

(1) And which obviously could not be made applicable to superior holders.

Under special circumstances the forfeiture of holdings under this Rule may be postponed by the Collector for one or more years.

If the holding in respect of which the arrear is due consists of two or more survey numbers, or of two or more portions of land, or estates separately assessed, and the Collector shall be of opinion that the whole amount of such arrear could be realized by the sale of some one or more only of such numbers, portions or estates, he may, in his discretion, restrict the forfeiture to such one or more of the said numbers, portions or estates.

Forfeited alienated holdings how to be disposed of.

59. The Collector shall cause the land comprised in any forfeited alienated holding to be entered in the records as unoccupied unalienated land, and may dispose of it forthwith, or at any subsequent time, in accordance with the rules and orders in force relating to land of that description: Provided that if the forfeited alienated holding was held for service, and the Collector is satisfied that the failure to pay the land revenue due thereupon arose solely from the inability of the watandár to meet the demand, he may deduct from the forfeited holding a portion of land of which the occupancy-price would be likely to equal the amount of the arrear recoverable, and deal with such portion in accordance with the rules and orders aforesaid, and restore the remainder of the forfeited holding to the watandár, or, with the previous permission of Government, may restore the entire forfeited holding to the watandár, and either remit the arrear of land revenue due, or make such arrangements for its being paid in the future as Government shall in each case sanction.

Forfeited occupancies in certain cases to be sold at the desire of defaulters.

59*A*. If a defaulter shall desire that his forfeited occupancy be put up for sale on the ground— (Notn. No. 7346, *B. G. G.*, 1886, Pt. p. 905.)

(1) that he obtained it on payment of consideration for the same to Government or to the previous occupant; or

(2) that the land comprised in the occupancy has been improved since the occupancy was last granted by Government;

the Collector shall inquire into the circumstances, and if the defaulter's request appears to him to be reasonable, shall put up the occupancy for sale:

Provided that the Collector shall not be bound to confirm the sale of any such occupancy, if he has reason to believe that the bidding thereat has not been *bonâ-fide* or that there has been collusion to recover the occupancy without payment in full of the arrears and charges due to Government, or if in the opinion of the Collector there has been some material irregularity in publishing or conducting the sale, which is likely to have affected the amount

of the highest bid or otherwise to have caused injury to any person.

Disposal of a forfeited occupancy which falls under Rule 59*A*. and is a recognized share of a survey number.

59*B*. If a forfeited occupancy which falls under Rule 59*A*. is a recognized share of a survey number, it shall first be offered by the Collector at such price as it seems to him worth, to the occupants of the other recognized shares in the survey number in the order prescribed in section 99 (*b*). If none of them buys it, the Collector will then deal with the occupancy as is prescribed in Rule 59*A*.

Forfeited occupancies when to be sold in other cases.

60. In cases not falling under the last preceding rules, forfeited occupancies shall be put up for sale for recovery of the arrears due, except when the Collector thinks—

(*a*) that owing to the badness of the times, or to the want of demand for land of the description comprised in the occupancy, or to a combination of the neighbouring landholders, or for any other special cause, there will be no bidders at the sale, or that the highest amount bid will be considerably below the upset price of the occupancy : or

(*b*) that the land comprised in the occupancy is likely to be required either immediately, or within such time as the Collector deems reasonable for any such purpose as is described in section 38 of the Land Revenue Code.

Rules and orders applicable to sales and purchasers of forfeited occupancies.

61. Every sale of a forfeited occupancy, as such, shall be made subject to the same rules and orders as are applicable to the sale of unoccupied unalienated land so far as the same are consistent with the provisions of Chapter XI of the Land Revenue Code; and the provisions of Rules 31 to 33, both inclusive, shall apply to the case of every such sale.

(Notn. No. 7346, *B. G. G.*, 1886, Pt. I., p. 905.)

Forfeited occupancy which is not sold how to be dealt with.

62. If, for any reason, a forfeited occupancy is not sold, the Collector shall either cause the land comprised therein to be entered in the records as unoccupied, and direct that it be dealt with under the rules and orders in force relating to land of that description, or take steps for having it at once lawfully assigned for any such purpose as is described in section 38 of the Land Revenue Code.

Restoration of forfeited occupancies.

63. It shall be in the discretion of the Collector to restore any forfeited occupancy at any time on payment of the arrear in respect of which the forfeiture was incurred, together with all costs and charges lawfully due by the defaulter, or, on

security being given to his satisfaction for the payment of the said arrear, costs and charges within a reasonable period.

No forfeited alienated holding shall be restored without the previous sanction of Government.

Recovery of land revenue due on forfeited holdings which are not sold.

64. When a holding which has been forfeited for default in payment of the land revenue due thereupon is not sold, the arrear payable by the defaulter shall ordinarily be remitted without having recourse to further compulsory process against him. But it is not intended that the right of recovering arrears from defaulters by other means, notwithstanding that their holdings have been forfeited and disposed of without being sold, should be altogether relinquished; in special cases the Collector may, with the sanction of the Commissioner, enforce that right.

X.—LIMIT OF FINES TO BE LEVIED UNDER SECTION 61.

Limit of fine under section 61 to be double what would be leviable in a similar case under section 66.

65. The limit of fine to be levied under section 61 of the Land Revenue Code, when land is unauthorizedly occupied and appropriated to any non-agricultural purpose, shall be double the amount of the fine that would be leviable under section 48 and section 66 of the Land Revenue Code, if the same land being in the lawful occupation of the trespasser had been appropriated by him to the same purpose without the permission of the Collector.*

XI.—FINES LEVIABLE WHEN UNALIENATED LAND ORIGINALLY APPROPRIATED FOR PURPOSES OF AGRICULTURE IS OTHERWISE APPROPRIATED. [Sections 65 and 66.]

Villages, towns and cities to be divided by the Commissioners into classes.

66. For the purpose of determining the amounts of the fines leviable under section 65 of the Land Revenue Code, the Commissioners shall divide the villages, towns and cities in their respective divisions into five classes. As soon as possible after the issue of these Rules, the Commissioners shall publish notifications in the *Bombay Government Gazette*, specifying by name what villages in each district are placed in the first four of

* (1) Section 61 of the Bombay Land Revenue Code has no retrospective effect, *i.e.*, its provisions cannot be enforced in respect of anything done before the Code became law on the 17th July 1879.

(2) But when an unauthorized occupation of land which commenced before the 17th July 1879 has been since continued, the Collector may, unless the occupier has in the meantime acquired a complete prescriptive title to the land,

(*a*) require payment of assessment under paragraphs 2 and 3 of section 61 for the whole period of occupation, except for any time prior to the 17th July 1879;

(*b*) summarily evict the person unauthorizedly occupying;

(*c*) forfeit any crop raised on the land subsequently to the 17th July 1879;

(*d*) require the removal of any building or other construction which the person unauthorizedly occupying the land may have erected thereon;

(*e*) failing obedience to the requisition under (*d*), forfeit the building or construction, whether it was erected before or since the 17th July 1879. (G. R. No. 6202, R. D., 1st September 1890.)

the said five classes; the fifth class comprising "all other villages in the táluka" not entered in the first four classes, and which need not be specified by name. The Commissioners may by similar notifications from time to time alter the said classification.*

Rates of fines ordinarily to be imposed under section 65.

67. In villages, towns and cities included in the first four classes by the said notifications, the fines leviable under section 65 of the Land Revenue Code shall ordinarily be at the following rates :—

Class I	Rs. 250 per acre	of the land actually appropriated to any purpose unconnected with agriculture, and at the same rate in proportion for fractions of an acre.
„ II	„ 150 „	
„ III	„ 100 „	
„ IV	„ 50 „	

In villages, towns and cities included in Class V by the said notifications no fine shall ordinarily be levied.

Notwithstanding anything hereinbefore contained, the Collector may, in his discretion, require the payment of a fine not exceeding the rate prescribed for Class I in any village, town, or city in any of the other classes in any special case.

68. Notwithstanding anything contained in the

[*To be substituted for Rule No. 68 of the Rules made under Section 214 of the Land Revenue Code, 1879, and printed at page 34 of the Compilation of Rules in force in the Revenue Department.*]

[Note. No. 5206, *Bombay Government Gazette*, 1897, Part I, page 1239.]

68. Notwithstanding anything contained in the last two preceding Rules the amount of fine imposable under section 65 of the Land Revenue Code in respect of lands within certain limits, to be from time to time defined by Government by Notification in the *Bombay Government Gazette*, in the neighbourhood of railway stations, large towns, military cantonments, and wherever else Government may deem fit, shall be fixed by the Collector, in his discretion, at rates not exceeding Rs. 5,000 per acre within the areas so specified.

[illegible] to non-agricultural purposes when to be refused.

Broach, Surat, Kánder and Bulsár to a non-agricultural purpose, or to have land so

* For the Northern Division *vide B. G. G.*, 1882, Pt. I., pp. 661 to 679, p. 800 (modified *B. G. G.*, 1883, p. 269); *B. G. G.*, 1882, Pt. I., p. 851, p. 975 and p. 1038; *B. G. G.*, 1883, Pt. I., p. 439; *B. G. G.*, 1885, p. 101 and p. 1090, *B. G. G.*, 1887, p. 413.

For the Southern Division *vide B. G. G.*, 1882, Pt. I., pp. 504 to 506.

For the Central Division *vide B. G. G.*, 1884, Pt. I., pp. 317 to 321; *B. G. G.*, 1886, Pt. I., p. 576.

For Sind *vide B. G. G.*, 1884, Pt. I., p. 508 (Shikárpur), p. 587 (Karáchi), p. 1230, Jacobabad and Upper Sind Frontier); *B. G. G.*, 1886, Pt. I., p. 54; *B. G. G.*, 1889, Pt. I., 28 (Hyderabad).

† *Vide* Notification No. 631, *B. G. G.*, 1883, Pt. I., p. 85, for certain towns in Ahmedabad, Kaira, Broach, Surat and Thána, modified as to Vijalpore, táluka Bulsár, Surat District, by Notification No. 2745, *B. G. G.*, 1887, p. 364; *B. G. G.*, 1886, Notification No. 2286, p. 289 (Poona).

Notification No. 6583, *B. G. G.*, 1888, Pt. I., p. 786, for certain towns in Dhárwár District.

B. G. G., 1888, Pt. I., Notification No. 2930, p. 382; Notification No. 6339, p. 801, for certain towns in Sátára modified *B. G. G.*, 1889, Pt. I., p. 1006, Notification 8916.

appropriated demarcated and made into a separate number under section 116, shall be granted by the Collector, if the superficial contents of the land to which the application relates is less than two hundred square yards.

Amount of fine to be levied under section 66.

69. The fine leviable under section 66 shall be fixed by the Collector at his discretion, but shall not exceed five times the amount imposable by him under section 65 of the Land Revenue Code. For the proposes of this Rule, villages, towns, or cities included in Class V by the notifications issued under Rule 66 shall be deemed to have been included in Class IV.

Special cases will be separately dealt with by Government.

*70. In such cases as Government deem exceptional or unusual the amount of the fine to be imposed by the Collector, whether under section 65 or 66 of the Land Revenue Code, will be specially fixed by Government at such rate as they deem fit, notwithstanding anything contained in the foregoing Rules.

Potters and brick and tile-makers exempted from last five Rules.

71. Nothing in Rules 66 to 70, both inclusive, shall be deemed to apply to potters and brick and tile-makers, who employ any material of the soil of the land in their occupancy for the purposes of their trade, or who erect huts or other buildings on their land for the more convenient pursuit of their trade. In the case of such persons no fine shall be levied under section 65 or 66 of the Land Revenue Code.

Rules 66 to 70 not to apply to Ratnágiri for the present.

72. Nothing in Rules 66 to 70, both inclusive, shall apply, until further orders, to the district of Ratnágiri.

The application of the said Rules to the District of Kánara having by previous orders been stayed, it is directed that on and after the 10th day of June 1890 the said Rules 66 to 70, both inclusive, shall apply to, and be in force in, the said District of Kánara. (Notn. No. 3807, *B. G. G.*, 1890, Pt. I., p. 511.)

**Building concessions at Bándra and other places near Bombay.*— For the present and until Government are in a position to appraise the value of building concession more accurately, each case must be dealt with by the Collector of Thána as a special case under Rule 70, and he must ascertain the market value of the concession and propose a fine which will bear a fair proportion to it for sanction of Government. The Assistant Collector should at once be directed to examine and report fully upon the various areas and situations in the villages contiguous to Bombay and near the line of railways in which agricultural lands are being applied to building purposes, their agricultural assessment, and their value as building sites. It is by no means necessary in the case of such exceptional areas as the suburbs of Bombay that a uniform rate of fine should be notified for each village; but if some general appraisements according to the value of the concession can be sanctioned by Government for particular localities and situations, it will be very easy for the Collector to let these be generally known without any notification in the *Gazette*, and cases may then be submitted for sanction under Rule 70 with tolerable certainty of the approval of Government so long as the local rate of appraisement is adhered to or any departure from it fully explained. (G. R. No. 2784, 12th April 1889, R. D.).

XII.—APPROPRIATION OF LANDS FOR PROHIBITED PURPOSES OR WITHOUT PERMISSION. [Sections 48, 66 and 214 (*i*).]

Procedure to be adopted for summary eviction of occupant.

73. When the occupant, or any tenant or other person holding under or through him, shall appropriate land in his occupation to any purpose prohibited by Rule 48, or unconnected with agriculture, without the permission of the Collector being first obtained, he shall be deemed to have committed a breach of the conditions of his occupancy; and if after reasonable notice he shall fail to restore the land to its original condition, he shall be deemed to have forfeited his right to occupancy of the land, and the Collector may proceed to evict him summarily in the manner provided in section 202 of the Land Revenue Code.

The Collector may remove or cause to be removed any property, moveable or immoveable, belonging to the occupant, standing or existing in or upon the land, and the cost of removal shall be defrayed by the occupant himself or in default by sale of the said property.

XIII.—RELINQUISHMENT OF OCCUPANCIES. [Sections 74 and 214 (*i*).]

Form of notice of relinquishment.

*74. The written notice of relinquishment of an occupancy required by section 74 of the Land Revenue Code to be given to the† Mámlatdár or Mahálkari, shall be in one or other of the forms in Appendix G.

Form of agreement to be entered into by the transferee, if any.

75. The written agreement‡ to be entered into by the persons or by the principal of the persons, if any, in whose favour an occupancy is relinquished, shall be in the form of Appendix D.

Endorsement as to identity required below notices and agreements.

76. Every notice and every agreement given under the last two Rules shall be endorsed by two respectable witnesses to the effect pre-

---

* As regards rájinámas and kabuláyats in alienated villages it is necessary to note that they are given in one of the three following ways:—

(1) Absolute relinquishment (Section 74 of the Land Revenue Code).

(2) Relinquishment in favour of another person and the agreement executed by that person (Section 74 of the Land Revenue Code).

(3) Agreement executed by a person taking up new land (Rule 32 of these Rules).

As regards (1) and (2)—

(*a*) In *unsurveyed* alienated villages inámdárs should continue to exercise the powers as they have hitherto been doing, section 74 not being applicable to such villages.

(*b*) In *surveyed* alienated villages, the inámdárs should, as far as possible, under Section 88, be invested where necessary with the powers contemplated by section 74.

As regards (3)—

Section 60 does not apply to alienated lands, and the power of the inámdár in respect of such agreement is unrestricted whether in *surveyed* or *unsurveyed* villages. (G. R. 959 of 10th February 1882.)

† *Vide* G. R. 1743, dated 2nd March 1889, R. D., quoted *supra* in note to Rule 32.

‡ The Court-fee on these agreements has been remitted by the Governor-General in Council under section 35, Act VII of 1870. Notification 7019, *B. G. G.*, 1889, Pt. I, p. 808, art. 24. Exemption from stamp duty under section 8 of Act I of 1879 is given by G. of I. Notification 5855, *B. G. G.*, 1889, Pt. I., p. 1008.

scribed below each of the said forms, and the Mámlatdár or Mahálkari who receives any such notice or agreement will be held responsible for exercising due care* in ascertaining the identity of the person who has signed the same, notwithstanding that such notice or agreement has been duly endorsed as hereinbefore required.

Notices and agreements to be preserved.

77. All notices and all agreements received under Rule 74 or Rule 75 shall be kept in separate files in the records of the village accountant until the expiry of one year after the end of the year in which they were given or executed, and afterwards in the records of the Mámlatdár or Mahálkari. (Notn. No. 2882, *B. G. G.*, 1883, Pt. I., p. 283.)

Village accountants to prepare notices and agreements without charge when so desired.

78. It shall be the duty of every village accountant if so desired by any occupant in his village or by any person in whose favour land is about to be relinquished by any occupant in his village, to prepare any notice or any agreement that may be necessary under Rule 74 or Rule 75, without fee or charge of any kind.

A village accountant who prepares any such notice or agreement shall affix his signature beneath the words "written by" on the lower left-hand corner thereof.

XIV.—SURVEY-FEES IN TOWNS AND CITIES.
[Section 132.]

Classification of towns and cities for the purposes of section 132.

79. Towns and cities to the sites of which a survey has been or may hereafter be extended will be divided by Government, by notification in the *Bombay Government Gazette*, into three classes for the purpose of determining the survey-fees to be levied therein respectively under section 132 of the Land Revenue Code.

The towns and cities hereinbelow mentioned, in which Bombay Act IV of 1868 was in force before the Code became law, shall belong to the following classes :—

Class I.	Class II.
Ahmedabad.	Ránder.
Surat.	Bulsár.
Broach.	Dhárwár.
Karáchi.	Hubli.
Hyderabad.	Bijápur.†
Sukkur.	

Rates of Survey-fees chargeable in each class.

80. Survey-fees shall be levied at one of the following rates according to the class under which each town or city falls :—

Class I.			Class II.		
Rs.	a.	p.	Rs.	a.	p.
5	0	0	3	0	0
4	0	0	2	0	0
3	0	0	1	8	0
1	8	0	0	8	0
0	8	0			

* *Vide* G. R. 1743, dated 2nd March 1889, R. D., quoted *supra* in note to Rule 32.

† Notification 1146, *B. G. G.* for 1885, Pt. I., p. 173.

Rates how and by whom to be fixed.

81. The rates of survey-fees to be paid by the holder of each tenement in each class shall be fixed by the Collector or, subject to revision by him, by such officer as he may empower in that behalf, on a full consideration of the position, value, rental and area of each holder's tenement and of the labour, time and expense involved in the survey of such tenement: Provided that not more than one survey-fee shall be payable in respect of each separate tenement.

Explanation.—"Separate tenement" shall be deemed to include all the area within one ring-fence or in one locality and in the actual possession of one and the same person or family. If any portion of such area is sublet or occupied separately, such portion shall be deemed a "separate tenement."

XV.—RECOVERY OF LAND REVENUE.
[Sections 146 and 214 (*i*).]

Land revenue where and to whom to be paid.

82. All payments of land revenue shall be made to the officers of the village in which such revenue is due: Provided that, with the sanction of the Collector, such payments may in special cases be made into the Huzúr or Táluka Treasuries.*

Agriculturists' instalments in Ratnágiri, Kánara and the khoti villages of Kolába.

83. In the Ratnágiri and Kánara Districts and in the khoti villages of the Kolába District, land revenue payable in respect of lands assessed for purposes of agriculture only shall, until further orders, continue to be paid in such instalments and on such dates as are now usual in those districts and villages respectively.

Agriculturists' instalments in other districts.

84. In all districts except Ratnágiri and Kánara, and in all the villages of the Kolába District, except the khoti villages, the land revenue payable in respect of lands assessed for purposes of agriculture only shall be paid in two equal or nearly equal instalments, on the following dates (namely):—

---

*(In answer to an enquiry whether No. 82 of the rules passed under section 214 of the Land Revenue Code is applicable to local funds, ábkári, toll, kurans, &c., farms, the following Government Resolution was passed):—

"Monies payable on account of *kurans* are land revenue. To them undoubtedly No. 82 of the Land Revenue Code Rules is applicable.

"2. But that rule, which has been framed under sections 146 and 214 (*i*) of the Code, is applicable only to actual *land* revenue. Monies which are leviable as an arrear of land revenue may be recovered under the law and rules applicable to the levy of land revenue, if they are not paid when due; but the rules regulating the date when they become due and the times when, the places where, and the persons to whom they should be paid must not be sought in the Land Revenue Code, or in the rules framed under it, but in the enactments and rules relating respectively to such monies. Section 8 of Bombay Act III of 1869, for instance, empowers the Collectors to appoint the agency through which the local fund cess shall be recovered." (G. R., R. D., 2215, dated 17th March 1883.)

(*a*) in the Thána and Kolába Districts (excepting the Khoti villages of Kolába), the 1st January and the 16th February;

(*b*) in other districts—

in villages placed under Rule 85 in Class I, the 10th December and the 10th January;

in villages placed under the said Rule in Class II, the 10th January and the 10th March;

in villages placed under the said Rule in Class III, the 10th February and the 10th April:

Provided that—

(1) in districts, or parts of districts where the above dates may be found to be unsuitable, the Collectors may, with the sanction of the Commissioner to whom they are respectively subordinate, fix such other dates as they may deem expedient according to the circumstances of the season and of the villages comprised in them and the character of the crops generally sown:

(2) when the total amount of assessment is Rs. 4 or under, it shall, if the Collector shall so order, be payable in a lump sum at the date of the first instalment;

(3) if the person from whom the year's revenue is due so wishes, he may in any case pay the whole amount at once instead of by instalments.

Method of classifications under clause (*b*) of the last Rule.

85. For the purposes of clause (*b*) of the last preceding Rule the Collectors of the districts to which that clause applies shall, with the sanction of the Commissioner to whom they are respectively subordinate, classify the villages in the said districts into three classes:

Class I shall include *kharíf* villages in ghát districts and elsewhere where it is necessary that the revenue be secured specially early.

Class II shall include *kharíf* villages in Gujarát and elsewhere where no such special provision is necessary.

Class III shall include *rabi* villages generally.

Instalments of land revenue to which the last three Rules are inapplicable.

86. Land revenue, to which the provisions of the last three Rules are inapplicable, shall ordinarily be paid in one instalment on such date as the Collector shall think fit in each case to prescribe; but in special cases the Collector may, in his discretion, allow the payment to be made in two or more instalments on dates which shall be fixed by him.

Form of notice of demand.

87. The notice of demand to be issued under section 152 of the Land Revenue Code shall be in the form of Appendix H.

Village officers to be held responsible for avoiding frequent issues of such notices.

The village officers shall be held responsible by the Collector for warning landholders verbally from time to time of the dates on which their instalments are due and for using their personal influence

in securing prompt payment without resort to notices of demand or other compulsory process, and exemplary punishment should be awarded to any village officer who is remiss in the performance of this duty.

88. The village officers shall report to the Mámlatdárs or Mahálkaris to whom they are respectively subordinate the names of the landholders who, they have reason to believe, will not punctually pay their instalments, in order that the precautionary measures authorized by sections 140 to 145 of the Land Revenue Code may, when necessary, be adopted in due time.*

Village officers to report names of landholders against whom precautionary measures will be necessary.

XVI.—ADMINISTRATION OF SURVEY SETTLEMENTS.

[Section 214 (*g*).]

(1) *Notification of Survey Settlement.*†

89. When a survey settlement shall have received the sanction of Government under section 102 of the Land Revenue Code, a notification shall be published in the district or portion of a district to which the settlement extends, in the form of Appendix J., and the period for which the assessments have been fixed shall be notified in the *Bombay Government Gazette.*

Notifications of settlement and of period of guarantee how to be made.

When the settlement is introduced into a portion of a táluka already partially settled, the guarantee will be restricted to the unexpired portion of the period for which the assessments in the first settled portion of the táluka were fixed.

---

* Distraints should be made by táluka kárkúns, kulkarnis, talátis and patels, provided that they should be executed only by persons able to read and write. In special cases the Collectors and their Assistants may direct the warrant to any person considered competent to execute it. (G. R. 7858 of 23rd December 1881.)

† (*a*) The announcement and introduction of rates are identical, for the assessment is introduced by being announced. The revised assessment comes into force in the sense that it is levied in and from the year after its introduction, and as the intention is that rates once fixed should be collected for thirty years, His Excellency in Council considers that the guarantee for thirty years should run from the year in which the rates are first levied as the first year of the thirty. The second clause of section 104 applies to the year after that in which the rates are introduced, and although application is often made to extend the period for relinquishment by postponing the date from March 31st to June 30th, and this has been sanctioned without remark, it is not clear that this application is not made in some confusion between the year of introduction and the year following. The object of section 104 clearly is that in the year of introduction no enhancement shall be levied and in the year following also an occupant may escape the enhancement by relinquishing his land, but not otherwise. It is not enacted in section 104 that if the new assessment is *less* than the old, the difference between the new and old assessment will be remitted in the year of introduction, and if the assessment is introduced after the old assessment of the year of introduction has been collected, there is nothing further to be done. (G. R. No. 4559, 6th June 1885.)

(*b*) Memorandum from the Commissioner, S. D., No. 480, A., dated 4th March 1887 :—

"2. It appears that it would be clearly illegal to levy the old rates or to refuse to grant refunds in the year of the introduction of the revised rates.

90 In isolated villages to which a survey settlement was extended before the 9th March 1858, the settlements shall be understood to have been fixed for a period of thirty years, unless there is specific evidence that a guarantee for a shorter period was given at the time.

Period of guarantee, in villages settled before 9th March 1858.

"3. Section 103 of the Land Revenue Code (last paragraph) enacts 'that when the assessments are announced in the manner provided in the first clause, &c., &c., the survey settlement *shall* be held to have been introduced'; thus the year in the course of which a survey settlement is introduced is the year in which the new rates are announced irrespective of the year from which the guarantee runs. The amount which an occupant is liable to pay to Government as the land revenue demand on his land is the survey assessment on his land for the time being; when a survey settlement is *introduced* in a place in a particular year, the Government land revenue demand for that year in that place is the assessment announced at the settlement.

"4. If the new assessment is the revenue for the year, the liability of an occupant is restricted to that amount only, and undersigned fails to see how anything more than the revenue for the year can be collected from an occupant.

"5. The first clause of section 104 was enacted for the purpose of giving additional concessions to occupants and was certainly not intended to restrict their rights."

RESOLUTION.—It appears to His Excellency the Governor in Council that the interpretation placed by the Commissioner, S. D., on section 103 is, when considered by the light of the discussions in the Legislative Council when Act I of 1875 revising Act I of 1865 was under consideration, incorrect. The Code contemplates (1) the year of introduction, (2) the year of levy. Section 103 lays down that when assessments have been announced in the manner provided, the survey settlement shall be held to have been introduced. Section 104 provides that the revised assessment shall be *levied* from the next following year. It is therefore clear that the new rates do not have effect in the year of introduction.

2. This view is supported by the speech of the Honourable Colonel Anderson in the discussion referred to above. He states as follows:—"If a settlement was introduced on the 25th August 1874, the new rates of assessment *would take no effect* in the year then current, and in the ensuing year 1875-76 the new rates would not be levied from any occupant who resigned his land before 31st March 1876." If then the new rates have no effect in the year of introduction, the old rates would have to be levied, and the question of remission does not arise. At a later stage in the discussion the particular question now brought forward was considered, it being proposed that the clause in the Bill might be altered so as to bring it into accord with the then custom; that where the new assessment was less than the old one the new only should be levied. This suggestion was however overruled, and looking to the manifest intention of the Legislature as indicated by the discussion above referred to, His Excellency the Governor in Council cannot construe section 104 of the Land Revenue Code as authorizing remissions in such cases as those now brought forward.

3. The Commissioner considers that, as Government have, in paragraph 5 of Government Resolution No. 10088, dated 16th December 1885, approved "of the practice of showing in the year in which a settlement is introduced, the new (be it more or less than the old) assessment as the revenue for the year, the liability of an occupant is restricted to that amount only." This however is merely a matter of accounts. The difference between the old and the new assessments, where the latter exceed the former, is shown in the accounts of the year of introduction as "remissions"; where the new assessments are less than the old there has hitherto been a difficulty in assigning a heading in the táluka accounts to which the difference may be credited. But in the revised Manual of Accounts shortly to be introduced these differences will be shown as "Occasional items of fixed revenue." It is simply for convenience sake; because the assessments have been announced and the exact amount to be paid by each holder made known, that the new assessments are shown in the year of introduction as the revenue. (G. R. No. 2836, 7th May 1887).

(2) *Trees.*

General reservations.

91 The extent to which the right of Government to trees is generally conceded under paragraph 2 of section 40 of the Land Revenue Code will be specified in the notification issued under Rule 89. The said general concession will ordinarily extend to all trees, except the following (namely) :—

(1) all road-side trees planted by or under the orders of Government;*

(2) teak, blackwood, and sandalwood;

(3) trees, the produce of which has hitherto been disposed of by Government.

Special reservations.

Trees in groves, trees round temples or places of encampment declared to be such by the Collector, and trees other than teak, blackwood or sandalwood which for any reason are of special value or utility will be specially reserved at the settlement and entries to that effect made in the settlement records.

The right to trees of any of the above classes which have already been specially assigned to the occupant or purchased by him, or to trees standing in public places, will, of course, not be affected by this Rule or by the notification issued under Rule 89.†

Government may reserve trees not specified in the last Rule.

92. Notwithstanding anything contained in the last preceding Rule, Government will specially reserve their rights to all trees, or to

---

* The propriety of laying down a general law concerning road-side trees planted by landholders in their own land was much discussed by the Select Committee on the Revenue Code Bill. That Bill, as introduced, contained a specific provision on the subject (section 107, clause *c*), but it was much opposed and it has been omitted from section 42 of the Bill as read a third time and passed on the 15th April 1879.

The only way to prevent such road-side trees being cut down is to apply the provisions of Act X of 1870 for the acquisition for public purposes either of the trees, or of both the trees and the land on which they stand. (G. R. 3495 of 3rd July 1879.)

†1. If trees on the banks of rivers and nálas grow in land included in an occupied survey number, they belong to the occupant. If they grow in the dry beds of streams which are not included within the boundaries of such a number, they are to be treated as Government property unless and until the occupant can establish his claim to them.

In cases where the boundaries of a field are not laid down on the banks of a stream, the area of the field as recorded in the survey registers should be taken as the guide in determining how far the right of the occupant extends. The occupant should be allowed the benefit of the trees on the area recorded, all beyond it being held to be the property of Government, subject to the provisions of the Land Revenue Code regarding alluvion. (G. R. 649 of 30th January 1882.)

2. *See* also Additional Orders, Part IV., Forests, of this compilation.

With regard to warkas lands in the Konkan, *vide* Resolutions se Rules, *infra* pp. 79-80.

What trees should be disposed of along with an occupancy.

96. Whenever the occupancy of survey number is disposed of at any time after the first introduction of a survey settlement, trees of the kind specified in clause (3) of Rule 91 shall be excluded from reservation, and shall be disposed of along with the occupancy under the provision of paragraph 2 of section 62 of the Land Revenue Code.

The land and the trees thereupon should vest in the same person.

97. Whenever the right to unreserved trees in any survey number is at the disposal of Government simultaneously with the occupancy of such number, all such trees shall invariably be disposed of to the same person who acquires the occupancy and not to any other person.

No. [illegible] B.G.G., Pt. I., [illegible].)

When once trees have been cut or disposed of, Government to have no right to after-growth.

98. When the right of Government to any trees in a survey number has been once disposed of to the occupant, or when reserved trees have been once cut and removed either—

(1) at the grant of the occupancy, or

(2) after such grant, or

(3) in the Province of Sind at any time before such grant or

(4) elsewhere than in the Province of Sind, within five years before such grant,

Government will have no further claim to trees of the same descriptions which may afterwards grow in the number, or which may spring up from the old roots or stumps during the occupancy of the said occupant.

No. [illegible] B.G.G., 1883, Pt. I., p. 372.)

(Notn. No. 385 B.G.G., 1884, Pt. I., p. 111.)

(Notn. No. 6195, B.G.G., 1884, Pt. I., p. 575.)

Savings of reserved trees in *varkas* and *beta* lands in certain districts from the operations of Rules 93 to 98.

98A. Nothing in the foregoing Rules No. 93 to 98, both inclusive, shall be deemed to apply to *varkas* lands in the districts of Thána, Kolába and Ratnágiri, and *beta* lands in the district of Kánara, or to any unalienated land in the Dindori Táluka of the Násik District, or in any of the villages noted in the margin* in the Khed Táluka of the Poona District, or to any land on the banks of streams and nálas in the Godhra Táluka of the Panch Mahál District, or to any river-side jambhul trees growing in occupied lands on the banks of the rivers† noted in the margin in the Párner, Ráhuri, Sangamner and Akola Tálukas of the Ahmednagar District.

* 1. Kuhinde Budruk.
2. Talavde.
3. Avdari.
4. Kude Budruk.
5. Washere.
6. Deoshi.
7. Saignon.
8. Vehtale.
9. Kahu.
10. Kadadhe.
11. Saburdi.
12. Koyali tarf Wade.
13. Darakvadi.

† Mula. Mhais. Pravara Mhalungi.

In the said lands the trees on which the rights of Government are reserved shall be available for cuttings to be made from time to time by or under the orders of the Forest Department, in consultation with the Collector.

of any such tree, or of the timber thereof
no right to the after-growth from the root
the tree so cut. The reservation of the
vernment over the trees will extend to
r-growth also.

ding fur-
of teak-
tálukas
ation of

nd pending the issue of further orders which will be issued by Government when the demarcation of forests in the Háveli, Purandhar and Junnar Tálukas and the Ambegaon Petha has been (Notn. No. 4774, *B. G. G.*, 1884, Pt. I., p. 441.)

othing in the said Rules Nos. 93 to 98,
ve, shall be deemed to apply to teak-trees
any unalienated land in any of the said
etha.

the issue of such orders, teak-trees
any such land shall be available for cut-
made from time to time by or under the
the Forest Department in consultation
llectors, and the sale of any teak-tree
any such land or of the timber thereof, will
ght to the after-growth from the root or
e tree so cut, but the reservation of the
overnment over the teak-trees will extend
r-growth also.

Entry of Co-occupants' Names.

s' names
y be re-

written application being made for this purpose to the Collector or, whilst survey operations are proceeding, to a survey officer, the names of the co-occupants
tered occupant of any survery number
re in fractional parts of a rupee of each
ipant in the occupancy may be entered in
along with the name and share of the
occupant of the number: Provided that
ry shall—

the liability of the occupants to Govern-
or amongst themselves, for the land
e of the number, or

emed to constitute the share to which
tes a recognized share of the survey
r. (Notn. No. 5546, *B. G. G.*, 1885, Pt. I., p. 868.)

spection, Maintenance, and Repair of Boundary-marks.

oundary-
furnished
Depart-
Collector.

the introduction of a survey settlement into a district the Superintendent of Survey shall furnish the Collector with a map and statements showing the posi-
nd description of the boundary-marks
prescribed by or under the orders of the
partment, with a view to his taking
or their maintenance and repair under
of the Land Revenue Code.

2

101.* The digging of earth close around an earthen boundary-mark for the purpose of repairing it is prohibited. A space of two cubits in breadth all round each such mark is to be left untouched, so as to prevent injury to the mark from water lodging in the cavities from which earth is taken for the repairs.

Digging near an earthen boundary-mark prohibited.

102. Village officers shall examine all the boundary-marks in their respective villages once a year in November or December, and the village accountant shall record in village form No. 3 (Hope's Forms) the condition in which the boundary-marks are found.

Boundary-marks to be usually inspected by village officers.

Details of all marks found to be out of repair shall be entered in village form No. 4 (Hope's Forms) by the village accountant, and after the lapse of a sufficient time to allow of the repairs to the marks being completed, a second inspection shall be made of every field entered in this register.

103. Prior to the second inspection, the Collector shall issue a notification under section 122 of the Land Revenue Code requiring landholders to repair their boundary-marks within a period of ten days. The provisions of paragraph two of the said section shall be rigidly enforced in the case of any repairs remaining unexecuted at the time of the second inspection.

Issue of notification by Collector under section 122.

104. A further test-inspection of boundary-marks shall be made annually in each village by a Mámlatdár's kárkún. The inspection shall be made in the presence of the village officers and of such of the landholders as may attend. The results of these inspections shall be recorded in the village form No. 3, in the column provided for the purpose, and in column 15 of village form No. 4 (Hope's Forms).

Test-inspection by Mámlatdár's kárkún.

For the first three years after the first introduction of a survey settlement this test-inspection shall extend to all the boundary-marks of each village. After the first three years the following Rules shall be observed :—

(1) For the purpose of táluka inspection of boundary-marks, the number of fields in each village shall be divided into four equal sections, and the fields comprised in one section shall be inspected by the General Duty Kárkún in each successive year. Thus the whole village will be completely supervised in a period of four years.

(2) The division of the boundary-marks of a village into sections as directed in the preceding Rule shall be made once for all by the Mámlatdár personally with the sanction of the Assistant Collector, who should be supplied with the divi-

---

Vide note to clause 3 (*a*) of Rule 111 *infra*, p. 51.

sion lists to enable him to take the necessary tests of the work performed by the Táluka Officers.

(3) Each General Duty Kárkún shall be duly supplied with lists specifying the fields of each village in his charge which he is required to inspect in a particular year.

(4) The inspections by General Duty Kárkúns must be careful and thorough, and the results of their inspections should be noted in village form No. 3 (Hope's Form) against each field as indicated in the form.

(5) The General Duty Kárkún should, when the required inspection in a village is over, sign a certificate at foot of village form No. 3 (Hope's Forms) to the following effect:—

"I hereby certify I have personally examined the boundary-marks of the fields noted by me as examined against each field."

General abstract of Inspection Registers.

105. When the necessary repairs have all been completed, the Mámlatdár or Mahálkari shall prepare and forward to the Collector, or to the Assistant or Deputy Collector in charge of the táluka, by a date to be specially fixed by the Collector of each district, a general abstract of the Inspection Registers.

Examination of boundary-marks by superior officers.

106. Mámlatdárs and Mahálkaris and Assistant and Deputy Collectors in charge of tálukas will personally examine the boundary-marks of some of the numbers of several villages in every táluka as soon as possible after the completion of the second inspection required by Rule 102. In the case of tálukas which are in the immediate charge of the Collector, that officer shall mark off several numbers in the village registers for examination by the Daftardár or other high officer of his establishment.

The results of inspections made under this Rule shall be recorded in the same way as in the case of inspections made under Rule 104.

Duty of Commissioners.

107. The Commissioners shall during their tours take measures to prevent the inspection and examination required by the foregoing Rules becoming a mere form.

XVII.—APPEALS. [Section 214 (*h*).]

Form and contents.

108. Every appeal shall be made in the form of a petition addressed to the authority to whom an appeal lies, and shall be drawn up in concise, intelligible and respectful language, and bear the signature or mark of the appellant or of his duly authorized agent.

The petition should give the following particulars:—

the name, father's name, occupation and place of residence or address of the appellant;
the name and address of the writer of the petition; and, if possible, the date of the order or decision appealed against and the name and designation of the officer who passed it.

The petition should also contain a brief and unexaggerated statement of the facts on which the appellant relies in support of his appeal; and the grounds of the appellant's objection to the order or decision appealed against.

Presentation.

109. Appeals may either be presented to the authority to whom an appeal lies in person, or be forwarded to him by post.

When an appeal is sent by post the postage on the cover containing it must invariably be fully prepaid.

Rejection of appeals without inquiry into their merits.

110. Inattention in any material respect to the requirements of either of the last two preceding Rules will render an appeal liable to be rejected without inquiry into its merits.

XVIII.—PENALTIES. [Section 215.]

Breaches of the Rules how punishable.

111. Breaches of the general Rules hereunder mentioned shall be punishable on conviction before a Magistrate* as follows:—

Clause 1.—(*a*) Whoever without due authority shall take, or attempt to take, any produce of any tree belonging to Government;

(*b*) whoever without due authority shall cut down or remove, or attempt to cut down or remove, any jungle or trees belonging to Government or the right to which has not been conceded by Government;

(*c*) whoever without due authority shall remove, or attempt to remove, the grass or any other produce of land belonging to Government;

(*d*) whoever without due authority shall dig or remove, or attempt to dig or remove, any earth, stone, kankar, sand or muram, or any other material from land belonging to Government;

shall be punished with imprisonment of either description which may extend to one month, or with fine† which may extend to five hundred rupees.

* Memo. by L. R.:—"The definition of the word 'Magistrate' given in Section 1 of the Bombay General Clauses Act, 1866, applies only to Acts of the Governor of Bombay in Council, not to rules made under such Acts.

"2. As no special definition is attached to the word as it is used in No. 111 of the Land Revenue Code Rules, it must be deemed to have, in that place, its ordinary meaning. 'A Magistrate' therefore means 'any Magistrate.'" (G. R. No. 3103, 20th April 1883, R. D.)

† Such fines should be recovered under section 181 B. L. R. C., that being a special or local law which is not affected by anything contained in the Code of Criminal Procedure, section 1, para. 2. (G. R. 4697, 9th June 1885, R. D.)

Clause 2.—(*a*) Whoever shall unlawfully cultivate land of which the cultivation has been prohibited under Rule 48;

(*b*) whoever shall unlawfully destroy or materially injure for cultivation land held for purposes of agriculture only;

(*c*) whoever shall appropriate for purposes of agriculture compounds to bungalows or patches of open ground surrounding houses after such cultivation has been prohibited by the Collector on sanitary grounds;

(*d*) whoever shall, except for the purpose of laying the foundations of buildings, sinking of wells, or making grain-pits, within the site of any village, town or city, excavate, without the previous permission in writing of the Collector, or, when such permission has been granted, shall excavate contrary to any terms prescribed by the Collector;*

(*e*) whoever shall suffer his land to be or to become overgrown with prickly-pear or rank grass so as to be dangerous to the health or safety of the neighbourhood;†

---

* Excavating, without permission, a foundation on the site of a village and building a wall upon it is not an offence under No. 111, clause 2 (*d*).

I. vs. *Sheshabhat bin Balkrishnabhat,* per Kemball and Birdwood, JJ. (H. C. Crim. Rgs., 8th May 1884.)

† (Memo. by Acting L. R.) "The question is whether a Magistrate has in the case of an alienated village, power to take action under clause 2 (*e*) of Rule 111 of the Rules under section 214 of the Land Revenue Code.

In my opinion the answer must be in the negative.

I think clause 2 (*e*) of Rule 111 must be held to refer to Rule 52 which applies only to unalienated land.

(1.) The rules must be read all together; and it is obvious that if Rule 111, clause 2 (*e*), is meant to be a rule for the punishment of any one who suffers his land—alienated or unalienated—to become overgrown with prickly-pear, &c., Rule 52 is superfluous. It seems improbable that this should have been intended, and more likely that Rule 111, clause 2 (*e*), should have been meant to refer back to Rule 52 with the wording of which it very closely corresponds.

(2.) Section 214 of the Land Revenue Code does not seem to authorize a rule to provide for the removal of prickly-pear, &c., from alienated lands.

No such rule could be made under section 214 (*c*) which deals simply with the appropriation of unalienated land (*vide* the last clause of section 48); nor could it, I think, be framed under clause (*i*). There is no other clause at all applicable.

Clause (*i*) runs as follows:—

The Governor in Council may from time to time make and from time to time vary or rescind rules or orders not inconsistent with this Act:

* * * * * * *

(*i*) Generally for the guidance of all persons in matters connected with the enforcement of this Act, or in cases not expressly provided for therein.

This clause no doubt is very vague and if construed quite literally would permit the prohibition of any act that was considered objectionable, however little connected it might be with Land Revenue administration. But this interpretation seems inadmissible. The rules to be framed under section 214 are intended to be in furtherance of the objects of the Act and in the preamble these are stated to be the amendment and consoli-

shall be punished with fine which may extend to five hundred rupees.

---

dation of 'the law relating to Revenue officers, and to the assessment and recovery of Land Revenue, and to other matters connected with the Land Revenue Administration.' Rules on other subjects appear to be *ultra vires* unless expressly authorized by some section of the Code.

It may perhaps be urged that Rule 52 departs somewhat from the purposes of the Act as thus stated, but incidentally it may be considered to protect the revenue by preventing injury to land liable to assessment; and at any rate it is within the provisions of the last clause of section 48.

But a similar rule when extended to alienated land becomes a mere sanitary regulation. It is based on no express section and does not appear any more authorized by the Code than would be a rule to regulate vaccination or to prevent the sale of unwholesome food." (G. R. No. 3639 dated 14th June 1887, R. D.)

(Memo. of Acting L. R.) "Government memorandum No. 5451 of 30th July 1889 calls for my opinion on the question, whether an order for the removal of prickly pear from 'partly deserted village sites' can be legally passed under section 34 of Bombay Act VII of 1867.

"2. I do not see any reason why under that section an order should not issue for the removal of prickly pear or other vegetation, &c., from an abandoned site in a village, unless the village itself has been wholly deserted. The section contemplates the responsibility of the *inhabitants* of the village for the removal from all common or waste land. The two words are, I think, used as *ejusdem generis* (*vide* Maine's Village Communities, p. 120. et seq.) to denote that part of the village domain which is unappropriated to the use of individuals in severalty, but in which a communal interest is recognised. 'Common' seems to connote *use* by the community, while 'waste' in its etymological and popular sense means that which is spoilt (French *gâter* and Latin *vastare*), unfit for use, unused or deserted.

"3. An abandoned building site seems clearly to fall under the latter description.

"Section 34 apparently was intended to impose on the village collectively, in respect of all such land, a joint responsibility for sanitation corresponding to the several responsibilities imposed by section 33 on individuals (*vide* B. H. Ct. Crim. Rgs. of 11th June 1874).

"4. The inhabitants of a village may, therefore, I think, be required to remove, or pay for the removal of, prickly pear, &c., from such a site within their village. If, however, the village is wholly deserted, the inhabitants of *another* village could not be made responsible for such deserted village.

"5. Reference is made in the correspondence to Rule 111, clause 2 (*e*) of the rules under the Bombay Land Revenue Code. I fear the High Court would consider that Rule *ultra vires*. It is a penal clause attached to Rule 52, which purports to be under sections 48 and 214 (*c*) and (*i*) of the Bombay Land Revenue Code.

"Section 48 prescribes the penalties for appropriation of land to purposes alien to agriculture or prohibited.

"If, notwithstanding such express provision, it was legal to prescribe by rules an additional penalty for such appropriation, the further question would arise whether Rule 52, which deals with mere passive neglect and not with appropriation to any purpose whatever, comes within section 48 of the Bombay Land Revenue Code.

"6. For this reason, I think that it would be safer to adopt, in respect of occupied lands, the course suggested in the correspondence, and to proceed under section 33 of Bombay VII of 1867 which was expressly intended to protect the public health, rather than under Rule 52 of the Bombay Land Revenue Code which deals rather with the interests of the public revenue." (G. R., R. D., No. 6540, dated 4th September 1889.)

Clause 3.—(*a*) Whoever shall dig earth within a space of two cubits of any earthen boundary;*

(*b*) whoever shall use land near villages which has been assigned for any of the purposes mentioned in Rule 43 for any other purpose, or shall use for any of such purposes, land near villages which has not been so assigned;

shall be punished with a fine which may extend to ten rupees.

---

* NOTE ON CLAUSE 3 (*a*).—"Rule 101 is not one that could legally be framed under section 214 (*g*). It is not a rule for the administration of a survey settlement:" *Ruling by the High Court in I.* vs. *Irapa bin Shidapa*—(H. C. Cr. Rgs., 6th September 1888.)

(Memo. by the Acting L. R.) "The High Court (Mr. Justice Birdwood and Mr. Justice Parsons) have held that Rule 101 of the Land Revenue Rules prohibiting digging within two cubits of a boundary mark, and by consequence Rule 111, Clause 3 (*a*), attaching a penalty to the breach of Rule 101 are *ultra vires*, and are not justified by section 214 of the Land Revenue Code, clause (*g*) which authorises rules 'for the administration of a survey settlement.'

2. It has been suggested that such a rule might be made under section 214 (*i*) if not under section (214 (*g*) of the Land Revenue Code.

Maxwell on interpretation of Statutes, pages 265 to 267.

3. Statutory powers are always construed very strictly, especially where power is given to impose a penalty.

4. Section 214 (*i*) only empowers the making of rules for the *guidance* of all persons in matters connected with the enforcement of the Act or in cases not expressly provided for therein.

Rules for "guidance" are essentially directory and adjective; they were meant to regulate procedure in enforcement of the Act, and not to operate as new substantive mandates, themselves to be enforced by penalty.

This is the view taken by the High Court. For the note made on the returns before the papers were called for by the High Court, runs as follows:—

> 'Quære whether this rule is not *ultra vires*. Section 215 gives the Local Government power to impose penalties only in the case of general rules passed under section 214. It is not clear how this rule falls under that section. Probably Clause (*i*) is contemplated, but that is somewhat vague, and it seems doubtful whether a rule for the *guidance* of persons could properly have a penalty attached to it.'

5. No new powers or obligations could be created by rules under section 214 (*i*). Such rules could only indicate the manner in which powers and obligations already conferred or imposed by the Land Revenue Code should be carried out. There is no power under the Code to punish unintentional injury to a boundary mark, and the only obligation under the Code except in case of wilful injury is to construct and repair such marks or pay the charges incurred in respect thereof.

6. But it is within the discretion of the Superintendent of Survey to prescribe the size, material and description of boundary marks according to the requirements of soil and climate. Where the soil and climate are of such a nature that the boundary mark unless protected by a space of two cubits left untouched, would be liable to injury from water lodging in the cavities caused by digging round it, it would be perfectly within the powers of a Superintendent of Survey to require all boundary marks injured from such cause to be repaired substantially with stones or in such other durable manner or material as would be costly enough to deter land-holders from thoughtlessly injuring the marks."

7. Resolution.—Government approve of the adoption of the course suggested in paragraph 6. (G. R. No. 2131, dated 19th March 1889, R. D.)

Clause 4.—Whoever, being a village officer,

(*a*) shall take or levy any fee for preparing any document or copy or extract of any document which he is bound by any Rule or Order to prepare without charge;

(*b*) or who shall charge any fee for granting any permission which he is authorized by these Rules to grant but for which no fee can lawfully be charged;

shall be punished with the punishment provided in clause 1 of this Rule.

Clause 5.—Whoever, being a village officer,

(*a*) shall refuse or neglect to prepare any document or copy or extract of any document, or to sign or certify the same, in the manner prescribed by any of the Rules;

(*b*) or shall neglect to make any report or to perform any duty which he is required by any of these Rules to make or to perform;

(*c*) or shall negect to inspect the boundary-marks in his village in the manner and at the time required by these Rules;

shall be punished with the punishment provided in clause 2 of this Rule.

Nothing in this Rule shall prevent any person from being prosecuted under any enactment for any offence punishable under these Rules, or from being liable under any enactment to any other or higher penalty than is provided for such offence by this Rule: Provided that no person shall be punished twice for the same offence.

APPENDIX A. (See Rule 5.)

Form of Annual Statement showing the results of inquiries made as to the sufficiency of the Security furnished by Revenue Officers in the District of for the year ending the of 18 .

Consecutive No.	Names and designations of Officers required to give Security.	Amount of Security given.	Nature of Security given.	Names of Sureties, if any, and dates of their Bonds.	Names of new Sureties, if any, substituted for former ones who have died or withdrawn, or whose fitness is considered doubtful.	Amount of Security, if any, for which each Surety is liable on account of other Officers, whether in the same or in any other Department.	Opinion of Head of Office as to sufficiency of present Security.
1	2	3	4	5	6	7	8

APPENDIX B. (See Rule 11.)

Forms of Sanads for revenue-free grants of land for Religious or Charitable purposes.

FORM NO. I.

To *A.B.*

WHEREAS Government have been pleased to grant to you, *A.B.*, the below-mentioned piece of land situated in the village of in the táluka of the district, for the purpose of * revenue-free (namely)—

All that piece of land bounded on the North by , on the South by , on the East by , and on the West by , and measuring from North to South and from East to West , comprising square in superficial area, and numbered No. in the :

It is hereby declared that the said land shall be continued for ever free of all claim on the part of Government for rent or land revenue to whoever shall from time to time be the lawful holder or manager of the said , on the condition that neither the said land nor any building erected thereupon shall at any time, without the express consent of Government, be diverted either temporarily or permanently to any other than the aforesaid purpose, and that no change or modification shall be made of the object for which the said is founded, and that in the event of any such unauthorised diversion, change, or modification being made, it shall be lawful for Government, on causing six months' previous notice in writing to be given to the said holder or manager, to take either of the two following courses (namely), either—

(1) to require that the said land be vacated and delivered up to Government free of all claims or incumbrances of any person whatsoever, or

(2) to impose thenceforward such annual rent for the occupation of the said land until the same is vacated and delivered over to Government as to Government shall seem fit, which said rent shall be recoverable under the law at the time in force for recovering an arrear of land revenue.

This grant is made subject to the reservation of the right of the Secretary of State for India in Council to all mines and mineral products and of full liberty of access for the purpose of working and searching for the same, with all reasonable conveniences.

* The purpose and the extent of the public interest in it should be clearly set forth, as, for instance, "building a dharmshála for the free and unrestricted use of all classes of the community."

This sanad is executed on behalf of the Secretary of State for India in Council by order of His Excellency the Governor in Council of Bombay, by the Collector of , this day of 18 .

(Signed)

Collector.

Seal of the Collector.

FORM NO. II.

To

A. B.

WHEREAS, in consideration of your having built (or undertaken to build, *as the case may be,*) a temple, with a dharmshála annexed thereto, for the use of the Hindu community (*or otherwise as the case may be*) on the piece of land hereinafter mentioned, which is your property (or which has been granted to you by Government for this purpose, *as the case may be,*) Government have been pleased, at your request, to exempt the said piece of land from liability to rent or land revenue.

It is hereby declared that so long as the said piece of land continues to be devoted to the purpose aforesaid, it shall be continued free of all claim on the part of Government for rent or land revenue to whoever shall from time to time be the lawful holder or manager of the said temple and its appurtenances (*or otherwise as the case may be*).

The piece of land herein referred to is situated in the village of in the táluka of district, and is bounded on the North by , on the South by , on the East by , and on the West by , and comprises about square in superficial area, be the same more or less, and is numbered No. in the .

*This grant is made subject to the reservation of the right of the Secretary of State for India in Council to all mines and mineral products, and of full liberty of access for the purpose of working and searching for the same with all reasonable conveniences.

This sanad is executed on behalf of the Secretary of State for India in Council by order of His Excellency the Governor in Council of Bombay, by the Collector of this day of 18 .

(Signed)

Collector.

Seal of the Collector.

APPENDIX C. (See Rule 27).

Form of Agreement for exchange to be executed by villagers removing to a new village-site.

†AGREEMENT executed the day of 18 by *A. B.*, resident of in the Táluka of the District.

WHEREAS Government have been pleased to sanction a change being made in the position of the site of the village of in the Registration Sub-District of of the District, and in pursuance of such sanction the following plot of ground has been allotted to me in the new site in exchange for the ground held by me in the old site, namely, the piece of land bounded as follows, that is to say, on the North by , on the South by , on the East by , on the West by , measuring in length from North to South, and in width from East to West, and comprising about square in superficial area and numbered No. in the :

I do hereby agree, in consideration of the allotment to me of the new piece of land aforesaid, as follows (namely) :—

(1). That all my right, title and interest in any land whatsoever, situate within the old site of the said village, shall be deemed to be, and is hereby, surrendered to Government, together with the trees standing thereon, and all rights over or other benefits arising out of, or enjoyed by me, in respect of the said land;

Notn. No.676, *B. G.G.*, 1886, Pt. I., p. 81.

(2). That I shall hold the piece of land aforesaid in the new site from the date of this agreement‡ on the same terms and with the same rights and subject to the same

*This clause is to be inserted only when the land is being granted under the sanad.

†The proper stamp-duty for this agreement is four annas. *See* Act I of 1879, Schedule I, Art. 5 [*b*].

‡Government does not by this form of agreement abandon any right of levying land revenue which it may possess under the B. L. R. C. or otherwise. (G. R. No. 9021, dated 6th November 1885, R. D).

liabilities as would apply to my tenure of the ground held by me in the old site, if I continued to be the holder thereof.

In witness whereof I have hereto set my hand the day and year aforesaid.

Written by

(Signed) *A. B.*

Signed and delivered by _____ in our presence

_____

_____

APPENDIX **D.** (See Rules 32 and 75).

Form of agreement to be passed by persons intending to become registered occupants.

*AGREEMENT.

To the Mámlatdár (or Mahálkari) of

I, *A. B.*, inhabitant of in the Táluka of the District, hereby accept, on behalf of myself and of my co-occupants, present and future, the occupancy of the land comprised in Survey No. (*or* of the building-site hereinbelow described, *or otherwise as the case may be,*) in the village of in the Táluka of the District, and I pray that my name be entered in the Government records as the registered occupant of the said land.

The said occupancy has been granted to me subject to the provisions of the Bombay Land Revenue Code, 1879, and of the rules in force thereunder, in perpetuity (*or* for the period of, *as the case may be,*) from the day of 18 ; †and I undertake to pay the land revenue from time to time lawfully due in respect of the said occupancy (*or* I undertake, whenever Government shall see fit to discontinue the exemption of the said land from payment of land revenue, to pay such revenue as may be lawfully imposed, under the orders of Government, thereupon, *or otherwise as the case may be*).

Dated the day of 18 at

Written by

(Signed) *A. B.*

We declare that *A. B.*, who has signed this agreement, is, to our personal knowledge, the person he represents himself to be, and that he has affixed his signature hereto in our presence.

(Signed) *C. D.*

E. F.

‡ We declare that to the best of our knowledge and from the best information we have been able, after careful inquiry, to obtain, the person who has passed this agreement is a fit person to be accepted by Government as responsible for the punctual payment of the land revenue from time to time due on the above land.

(Signed) *G. H.*, Patel,

J. J., Village Accountant.

APPENDIX **E.** (See Rule 34.)

Form of written permission to occupy land to be given by a Mámlatdár or Mahálkari under Section 60.

Permission is hereby given to *A. B.*, inhabitant of in the Táluka of the District to occupy Survey No. (*or* the building-site hereinbelow described, *or otherwise as the case may be,*) in the village of in the Táluka of the District.

Dated the day of 18 at

Seal.

(Signed)

(Mámlatdár (or Mahálkari).

* *Vide* note on Rule No. 75.

† When an occupancy is sold for a fixed period free of land revenue, the agreement should end here, and the second endorsement may be omitted.

‡ This endorsement is to be required only when the agreement is given under Rule 32.

APPENDIX F. (See Rule 57.)

Form of Register of Alienations.

Register of Alienated Villages and Lands in the District kept under Section 53 of the Bombay Land Revenue Code (Bombay Act V of 1879).

Serial Number.	Number of Village.	Number of the present Alienee.	(1) Class of Alienation.	(2) Particulars of the Sanad.						Duration of tenure, i.e., whether continuable permanently or hereditarily for more lives than one, or for life only, or for what period.	Particulars of the villages or lands alienated.				(5) Land Revenue payable to Government.				Land Revenue alienated.	Remarks.
				Number.	Date, month and year.	Name and Office of the Officer signing it.	Name of the Holder.	Names of the Táluka and District in which it is entered.	(3) Number of Form of the Sanad annexed to the Register.		Entire village.	If part only of the village, the Survey Number.	Area.	Survey Assessment.	(4) Amount of old *judi* or *seldmi*.	Additional Quit-rent, if any, payable under the Sanad. Rate.	Additional Quit-rent, if any, payable under the Sanad. Amount.	Total.		
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21
								Táluka.												
								Táluka.												

NOTES:—

(1) This column should show whether the sanad is for a political or other saranjám, or a personal inám, or a devasthán, or a watan inám or a district officer's watan, or a village servant's watan, and in the latter case whether the watan is (*a*) useful to the village community, or (*b*) useful to Government. If the alienation does not come under any of these classes, it should be appropriately described.

(2) In those cases in which no sanad has been granted, the number and date of the decision confirming or continuing the alienation should be written across columns 5—10.

(3) To avoid the necessity of copying out a sanad *in extenso* in each entry, a sample form of every kind of sanad registered should be annexed under the Collector's signature to the Register, and numbered, and the number of the form should be entered in column 10 of each entry.

(4) If the amount of *judi* actually paid has been less than the maximum amount fixed by the Inám Commission or otherwise, the former amount should be entered in column 16, and the latter, with an explanatory note, in column 21.

(5) When columns 16—18 are inapplicable, the amount of land revenue payable should be shown in column 19 only.

APPENDIX G. (See Rule 74.)

Form of Notice of Relinquishment.*

No. 1. † *Absolute Relinquishment.*

To the Mámlatdár (or Mahálkari) of

I, *A. B.*, inhabitant of in the táluka of the district, the registered occupant of Survey No. the building-site hereinbelow described (*or otherwise as the case may be*), in the village of in the táluka of the district, hereby give notice, under Section 74 of the Bombay Land Revenue Code, 1879, that it is my intention to relinquish absolutely the occupancy of the said Survey No. (*or* building-site, &c.,) at the end of the current year.

Dated this day of 18 at

Written by (Signed) *A. B.*

* No Court-fee is chargeable on an application to relinquish land. Court Fees Act VII of 1870, Section 19 (XI).

† These notices must be given before the 31st March, or such other date as Government prescribe, under Section or each district.

We declare that *A. B.*, who has signed this notice, is, to our personal knowledge, the person he represents himself to be, and that he has affixed his signature hereto in our presence.

(Signed) *E. F.*
G. H.

No. 2. Relinquishment in favour of some other person.

To the Mámlatdár (or Mahálkari) of

I, *A. B.*, inhabitant of in the táluka of the district, the registered occupant of Survey No. (*or* of the building-site hereinbelow described, *or otherwise as the case may be,*) in the village of in the táluka of the district, hereby give notice, under section 74 of the Bombay Land Revenue Code, 1879, that I have relinquished the occupancy of the said Survey No. (or building-site, &c.,) in favour of *C. D.*, inhabitant of in the táluka of the district; and I request that the necessary mutation of names be made in the records.

Dated this day of 18 , at
Written by (Signed) *A. B.*

We declare that *A. B.*, who has signed this notice, is, to our personal knowledge, the person he represents himself to be, and that he has affixed his signature hereto in our presence.

(Signed) *E. F.*
G. H.

APPENDIX H. (See Rule 87.)

Notice to a Defaulter.

To *A. B.*, residing at

You are hereby required to take notice that the sum of Rs. a. p. due by you on the as the (* instalment of) land revenue on (Sub-No. of) Survey No. (*or otherwise as the case may be*) in the village of in the táluka of in the district, has not been paid, and that, unless it is paid within ten days from the date of this notice, together with the sum of annas, being the fee chargeable for this notice, compulsory proceedings will be taken according to law for the recovery of the whole of the revenue still due by you for the current year on the said land.

Dated the day of 18 .

(Signed) Mámlatdár (or Mahálkari).

APPENDIX J. (See Rule 89.)

Notification determining the period of Settlement.

The Governor of Bombay in Council having sanctioned the Survey Settlement introduced by the Superintendent of Revenue Survey and Assessment, under the provisions of the Bombay Land Revenue Code, 1879, into the táluka of the district, the following notification is published for the information of the landholders and village officers in the said táluka:—

1. The survey rates as fixed under this settlement will remain in force without increase for a period of years, commencing from † and extending to †

Duration of settlement.

2. But in the case of land which may hereafter be brought under irrigation by the use of water, the right to which vests in Government, or which is supplied from works constructed and maintained by, or at the instance of, Government, or of land which may be supplied with an increased amount of water from works constructed, repaired, or improved at the cost of the State, Government reserves to itself the right of imposing an extra cess or rate, or of increasing any existing rate, for the use of water supplied or increased by such means, whether under the provisions of the Bombay Irrigation Act, 1879, or otherwise.‡

Extra cess for water.

3. In addition to the fixed assessment, a cess not exceeding such rate as may be allowed by law will be levied under the Bombay Local Funds Act, 1869, or other law for the time being in force, for the purpose of providing funds for expenditure on objects of local public utility and improvement.

Local Funds.

4. The Government rights to trees standing in lands which are now occupied, is hereby conceded to the occupants thereof, subject to the general exceptions entered in the margin§ and the special exceptions recorded in the settlement records.

Right to trees.

---

* "First" or "second," as the case may be.

† Here enter the Fasli and A.D.

‡ Should any other special cess, for the maintenance of irrigation works, such as the pát-fála in Khándesh, be levied, it should be here specified.

§ The names of reserved trees are to be specified in the margin.

APPENDIX K.

REVENUE DEPARTMENT.

The following Resolution by the Government of India is published is supersession of the Rules notified in the *Bombay Government Gazette*, dated 21st September 1871, page 1014:—

"No. $\frac{1}{142}$.

Extract from the Proceedings of the Government of India in the Department of Agriculture, Revenue and Commerce, dated Fort William, the 6th February 1872.

[LAND REVENUE AND SETTLEMENTS.]

READ again—

Financial Department Resolution No. 557, dated 25th January 1870.
Home Department Circular Resolution No. 229-39, dated 27th April 1870.
Financial Department Resolution No. 1452, dated 23rd June 1870.
Home Department Circular No. 427-36, dated 4th July 1870.

RESOLUTION.

In the Resolutions quoted above it was ruled that the sanction of the Government of India should be obtained to the alienation of all Government land, whether actually paying revenue or not, except grants of waste land made under the approved rules, and that Government land, whether paying revenue or not, should not be parted with save under the rules applicable to the expenditure of public money. It was also laid down that if the sale of small plots of escheated land for the benefit of local funds has not been duly sanctioned, it must be considered subject to the above restrictions.

2. Several local Governments and Administrations having represented the inconveniences arising from a strict adherence to these orders, the Governor General in Council has been pleased to modify them as follows:—

3. Lands to be disposed of will necessarily divide themselves into two classes:
First—Those which are the property of the State;
Second—Those which, under competent authority, have been constituted the property of a municipality or other local body.

4. Lands of the first class may be disposed of in various ways—
First—By sale at full market value;
Second—By sale on favourable terms—
to a public body or association, or to an individual, for a public purpose;
Third—By gift or grant to—
(*a*) a public body or association, or to an individual, for a public purpose;
(*b*) private individuals in remuneration for public services to be performed;
(*c*) private individuals for their private benefit, without reference to future services.

5. As regards lands falling into the second of the above classes, which have been under a competent authority, constituted the property of a local body, the Government of India will exercise no interference. It will be the duty of local Governments and Administrations to satisfy themselves that the lands in question have been transferred under proper authority, and this having been ascertained, the sanction of the local Government or Administration will be sufficient for the disposal of the lands.

6. As regards lands, the property of the State, such of them as are governed by the rules for the grant of waste lands, will continue to be dealt with under the rules on this subject in force for the time being.

7. As regards lands, the property of the State, other than waste lands, which are sold for full value, no reference to the Government of India need be made where the full value does not exceed Rs. 10,000. Up to this amount the sanction of the local Government or Administration will in all cases be sufficient. The amount realized by the sale of the land should invariably be credited to the general revenues, and the sale should be duly noticed in the proceedings of the local Government or Administration.

8. As regards the sale of lands on favourable terms, for a public purpose, in no case should the recipient pay less than half the full market value of the lands granted; and whenever such full value exceeds the sum of Rs. 1,000, the sanction of the Government of India should be previously obtained. The amount realized by the sale should in all cases be credited to the general revenues, and the sale should be noticed in the proceedings of the local Government or Administration.

9. As regards the gift or grant of lands, the previous sanction of the Government of India should be obtained in cases where the value of the grant exceeds Rs. 3,000, when given as a site for the construction of Government schools hospitals, dispensaries, or other

public works, at the cost of recognized local funds: where it exceeds Rs. 500, when given for any other public purpose, or to a private individual for services to be performed to the State, * or where it exceeds Rs. 100 when the services are to be performed to the community and in *all* cases of grants to individuals for their private benefit irrespective of any services to be performed.

* *N.B.*—This does not refer to cases in which the local Government may have been separately authorised to dispose of lands under special rules sanctioned by the Government of India.

APPENDIX L.

No. 5215.

Extract from the Proceedings of the Government of Bombay in the Revenue Department, dated 29th September 1879.

Read the following letter from the Secretary to the Government of India, Home, Revenue and Agricultural Department, No. 2—11, dated 1st September 1879:—

In continuation of my circular Nos. 40 to 49, dated the 14th August 1871, making certain enquiries in regard to the mineral rights of Government, I am desired to forward, for the information of His Excellency the Governor in Council, a copy of the Proceedings of this Department for August 1872, Nos. 26 to 37, and of the marginally noted correspondence with the Government of Madras and the Solicitor to Government.

From the Government of Madras, No 847, dated the 27th February 1877, and enclosures.
From the Government of Madras, No. 320, dated the 23rd January 1877, and enclosures.
To the Solicitor to Government, No 1481, dated 5th December 1878.
Reply No. 83, dated 30th January 1879, and enclosures.
Despatch to the Secretary of State, No. 7, dated the 1st September 1879.

2. I am to explain that, on consideration of the papers which are recorded in the Proceedings for August 1872, it appeared that no immediate action was necessary, unless Government had been prepared to resort to legislation—a course the desirability of which did not seem to be sufficiently established at that time. No general legislative measure is now in contemplation, nor is it intended to institute in the Bombay Presidency any special enquiry as to the State's rights to minerals, unless, at any time, circumstances should arise which should render such an enquiry indispensable in the interests of those exclusive preminent powers which belong to the State as representing the community at large. Such powers it is all the more necessary carefully to guard when there is reason to believe that they may be valuable. It is therefore thought expedient now to direct attention to the matter, and to request, first, that, subject to any instructions which may be received from the Secretary of State in connection with the reference that has been made to him by the Government of Madras in all future grants and leases of Government waste land for cultivation in the Bombay Presidency, full rights may be reserved to Government in respect of all minerals which may be discovered in or under such land; and, secondly that, in all cases in which minerals may be discovered in any place where there is ground for the belief the Government may be entitled to them, or may have a right to assess them to land revenue, a full enquiry may be made and the result reported. Rights of way and other reasonable facilities for working, getting and carrying away such minerals as may be found should also be reserved on behalf of Government or the assignees of Government in deeds of sale and leases of waste lands.

3. Whenever it is found possible to do so, the right of Government to the minerals should be asserted and reserved in all future settlements; and if in any case this is not possible, then, in such settlements, the reservation should take the form of a right to put a separate assessment on mineral produce. This last direction, however, is of course subject to any special peculiarities which may exist in the local revenue system.

4. It will be understood that, except in so far as the precautions above directed require, it is not intended in any way to anticipate future events. Should any case similar to that of the gold discoveries in the Wynaad arise elsewhere, it can be dealt with, as it occurs, on the analogy of the instructions which Her Majesty's Secretary of State may be pleased to give on the despatch of the 1st current.

RESOLUTION.—The instructions of the Government of India should be communicated to the Commissioners of Divisions and the Commissioner of Survey for information and guidance.

GOVERNMENT OF INDIA.

HOME, REVENUE AND AGRICULTURAL DEPARTMENT.

State rights in Minerals and Mining Leases.

From the Government of India to the Secretary of State for India,—No. 7, dated Simla, the 1st September 1879.

We have now the honour to reply to your Lordship's despatches marginally noted, concerning the rights of the State in minerals, and the terms that should be imposed on gold mining leases on Government lands in the Wynaad districts of Madras. There has been

No. 40, dated 10th May 1877.
No. 69, dated 10th October 1878.

delay in coming to a decision on these points, because we were obliged to take legal advice on some of the questions raised, and because we desired to ascertain the policy recently adopted in Australia regarding mining leases in the gold-fields of that continent.

2. Regarding the State rights in minerals, three distinct questions had first to be considered, namely :—

(1) whether the royal prerogative, as it obtains in England in respect to gold and silver mines, prevails in British India; and whether grantees of waste land are entitled to mines of gold and silver found thereunder, when the deed of grant is silent as to such mines ;

(2) whether, apart from such prerogative, the Crown in India can assert a right to gold, silver, or other minerals on any other ground ;

(3) whether, if both these questions are answered in the negative, the mineral resources of the land can be taken into account in assessing land-revenue.

3. The Madras Government, in their letter No. 320, dated 23rd January 1877, concurred with their Advocate General, and expressed an opinion that the royal prerogative regarding gold and silver mines did not prevail in India. They held that it would be impolitic, even if it were legally possible, to assert any Government right in the mineral resources of lands sold under the Waste-Land Sale Rules, or in lands held by certain ancient proprietors of the Malabar district. The Governor of Madras in Council advised also that the claims of ryots to the mineral wealth of their holdings should not be disturbed; and on this point His Grace in Council differed from the view expressed by the Madras Board of Revenue. The Madras Government pointed out that, if large numbers of gold-workers were to come to the mines, police and other expenses would be thrown on the Government, to meet which a reasonable royalty might properly be imposed. The Governor of Madras in Council also recommended that, until the policy of Government with reference to mineral rights in the soil was settled, all sales of Government land under the Waste-Land Sale Rules should be made subject to the reservation of the State rights in minerals found underneath those lands.

4. We referred the three questions stated in the second paragraph of this letter for the opinion of our Advocate General, of our standing Counsel, and of one of the first lawyers in Calcutta. We submit copies of the opinions of these gentlemen for your Lordship's information. It will be seen that they all three agree that the prerogative of the Crown regarding gold and silver mines does not exist in India outside the presidency towns, and that grantees of waste land are entitled to mines of gold or silver found thereunder when the terms of the grant are silent as to such mines. While there is no doubt that all the prerogatives essential to the maintenance of the executive power, such as the right of making war, peace and treaties, are in force throughout British India, yet, as the right to mines of gold and silver is merely a fiscal prerogative, and is not essential to the maintenance of the executive power, it stands precisely on the same footing as the prerogative rights to whales and sturgeon wrecks, treasure-trove, waifs and estrays—cases in which no one would maintain that the Crown has any right in India apart from express legislation. Such prerogatives, in fact, belong to that part of the English Common Law which has arisen from, and is adapted to, merely local requirements, and is not therefore in force in this country. Moreover, since the Indian Legislature, in the Punjab Land-Revenue Act (XXXII) of 1871), section 29, thought it necessary to declare that in the Punjab mines of metal shall be deemed to be the property of Government, and since, by the Ajmere Land-Revenue Regulation (II. of 1887), section 3, the Government is, with certain exceptions, presumed to be the sole owner of all mines until the contrary is proved, it would be inconsistent to contend that the prerogative right to gold and silver mines exists in India, as, if it did, there would have been no need for these express statutory provisions, or at least these particular metals would have been excluded in framing them. On these grounds, we consider that the opinion of the law officers may be finally accepted, and that whatever be the rights of the Government of India in the matter, no claim on the part of the State can be preferred on the ground of the prevalence in India of this royal prerogative outside the limits of the presidency towns. As to the right of grantees, the decisions in England are to the effect that mines of gold and silver will not pass by a grant from the Crown without express words granting them. We are, however, advised that the principle of such decisions is wholly inapplicable to India. When this principle was established in England, grants from the Crown of its land had the effect of impoverishing the Crown, being made from favour and without consideration moving from the grantee. But in India such grants have, it is believed, usually been made in consideration of a money payment, and have therefore had the effect of enriching the Crown. We are aware that this argument was used unsuccessfully before the Judicial Committee of the Privy Council in the case of *Woolley* vs. *The Atorney General of Victoria*, Law Reports, 2 App., Ca. 163, 165. But the reason why it failed was that the Common Law of England (including all the prerogatives and the consequences thereof) had been introduced into the Colony of Victoria, from which that appeal was presented. No such introduction, it is conceived, can be held to have taken place in this ceded and conquered country. The reason why in England grants from the Crown are construed strictly against the grantee is generally said to be that prerogatives are conferred

on the Crown for public use, and are therefore not to be understood as diminished by any grant beyond what it takes away by necessary and unavoidable construction. But where no such prerogative exists, of course that reason ceases. We therefore consider that grantees of waste lands (whether or not the grants expressly comprise "all products both above and below the surface") are, in the absence of any provision to the contrary, entitled to mines of gold and silver found thereunder.

5. In regard to the second question, whether the State possesses other general or special rights in minerals lying under lands which are private property, our Advocate General differs from the other two learned gentlemen who were consulted. Their opinions referred mainly to Bengal and the permanently-settled districts with the circumstances of which they were conversant. Mr. Paul considers that the State has rights in the minerals found in permanently-settled estates; while Messrs. Bell and Evans think that the State does not possess such rights. We consider that the latter is the opinion most likely to be taken by the Courts. And we are confirmed in this view by the practice of the past twenty years, whereby the Government or any private parties who desired to work coal or iron within the limits of a permanently-settled estate have been obliged to buy, or at any rate have bought, the right of so doing from the Zamindár of the lands underneath which such coal or iron might exist. Regarding the circumstances of other provinces, and the way in which State rights in minerals had been asserted or waived, enquiry was made from Local Governments in the year 1871. The replies to that enquiry are recorded in the Proceedings of the Revenue, Agriculture and Commerce Department for August 1872, Nos. 26 to 37, copies of which are now submitted for your Lordship's perusal. It appears from these papers that in most parts of the country no established law or practice was known upon the subject; and that, as no mines had been opened no occasion had arisen to determine the rights of the State in respect to such property. In the North-Western Provinces, however, it had been ruled that, where the surface land had been declared private property, the ownership extended, in default of some distinct and special reservation, to what was below the surface. In newer provinces, on the other hand, such as the Punjab, there was no settled judicial precedent making mines and metal private property. And accordingly opportunity was taken to declare by legislation (section 2 of Act XXXIII of 1871) that mines of metal in the Punjab and also in Ajmere (section 3 of Regulation II of 1877) should be deemed to be the property of Government. Similarly, in the Central Provinces, at the time when proprietary right in their lands was conferred upon the landholders, the full right of Government to minerals was reserved under the provisions of the Settlement Code. So also in Berar, a notification issued by the Resident in 1868 concerning the settlement then in progress declared that "the prior right to all valuable things below the surface belonged to the State."

6. On the third point, namely, whether minerals belonging to private proprietors can be taken into account in assessing the estates of those proprietors to land-revenue, the Advocate General and the other learned gentlemen consulted are, in the main, agreed that when temporarily-settled estates, come under resettlement, the minerals, just like the other resources of such estates, constitute assets on which land-revenue may fairly be assessed. This practice has been already partially followed in provinces where miscellaneous items are reckoned into the village assets for the purposes of the assessment of land-revenue.

We have already noticed (paragraph 3 of this despatch) the views of the Madras Government and of the Madras Board of Revenue regarding the rights of ryots to all mines and minerals in their holdings. Seeing that different classes of tenure may be grouped under the generic term of 'ryotwári tenure,' we hesitate finally to accept, without further enquiry, the view that all holders of ryotwári lands are entitled to all mines and minerals under the holdings. Probably the *jenmies* of Malabar, whose tenure is ancient, may be so entitled. But we shall ask the Madras Government to consider further the question of the rights of ordinary ryots in the minerals under their holdings.

7. Such being the opinions of the Law officers, and such being the reports or recommendations of the several Local Governments, we would advise your Lordship to answer the three questions summarised above (paragraph 2) thus:—

(1) The Crown has in British India no special prerogative over gold and silver mines outside the presidency towns; and grantees of waste land are entitled to mines of gold or silver found thereunder when the deed of grant is silent as to such mines.

(2) No general rule, applicable to all provinces, can properly be laid down, either that minerals and metals found in proprietary lands belong to Government, or that they do not so belong. Even in different parts of the same province, the law and the fact on this matter may be different. When the question arises in each province, it will have to be answered for that province only, in accordance with the practice of the Government and with judicial (or other) precedent. But in any province where proprietary rights have been a recent creation of the British Government, where their precise nature and extent are still unsettled, and where custom or practice about mines has not had time to grow up, advantage should be taken of favourable opportunity to declare by legislation that mines of metals in such provinces are State property.

(3) Mineral resources of temporarily-settled lands, where the proprietors are held to be the owners of such resources, may be taken into account at any resettlement as assets on which the public demand for land-revenue may be assessed.

Further, we should have no hesitation in proposing legislation, if necessary, to provide for raising from mining communities the expenses of special police, special communications, regulating the water-supply, or other special administrative arrangements which might be necessary for the protection or welfare of such communities. Such legislation would be in accordance with the principle adopted in section 14 of Act V of 1861, where provision is made for enlisting special police for the protection of, and at the cost of, any manufactory or public work.

8. We have considered the proposal of the Madras Government that in future sales of waste lands the State should reserve full rights and property in all metals and minerals which may be found in such lands, and also all reasonable conveniences for working such minerals or metals, either by itself, or through other parties. We agree that it is expedient henceforward to sell or grant on lease waste lands subject to these reservations. We solicit your Lordship's sanction to our modifying the Waste-Land Sale Rules accordingly; and we enclose copy of a circular order we have issued, directing that, until your Lordship's orders are received, sales or leases of waste lands shall be made subject to such reservation of full State rights in mines and minerals, together with all convenient powers for getting the same.

9. Lastly, there remains the practical question, which requires early dicision, namely, on what terms shall mining leases on Government waste lands in the Wynaad, Coorg, or adjacent auriferous tracts be given. We recognise the fact that it is of great importance to India that these gold sources should be worked to the best advantage; we admit that, if gold should be produced in large quantities, the, effect of such production on the exchanges between England and India would be of great value; and we think that the terms as to royalty, area of mining leases, and the mode of working should be as liberal as may be possible without encouraging undue speculation. We learn from Mr. Brough Smyth that the most approved system of mining leases in Australia now is to let the land at a moderate rent (ten shillings) per acre, the lessee being bound to employ per acre, or per running yard of reef, a certain minimum quantity of labour on *bonâ fide* mining operations of an approved kind. If the lessee fails to fulfil this condition, he forfeits his lease; and the terms of the mining lease make the Governor of the Colony the final arbiter, on such evidence as may be laid before him, whether a particular lessee has, or has not, failed to fulfil the condition. In the early days of gold-mining industry in Australia, heavy fees (£ 3 and £ 2 per month) were charged for mining licenses. Subsequently an export duty was levied on gold taken from the colony; but latterly the Colonial Government of Victoria has found that the largest indirect avantages to the Colony are secured by making the mining leases simple and liberal, subject to the one condition that a certain quantity of labour is employed on *bonâ fide* mining operations for each acre leased.

10. Plans for levying a royalty on the ton of quartz raised, or for establishing a local office of assay and levying a royalty on the gold, have been proposed. But we consider that, for the present, while the industry is undeveloped, our object should be to make the terms of mining leases of Government lands as simple and liberal as possible. In order to prevent large areas falling into the hands of speculators, it has been suggested that a certain limit of available capital, or a certain quantity of (stamping or other) machinery, should be required per acre of land leased. But we are advised that these conditions have been tried, and have been found inoperative and unsatisfactory in Australia, and that the simple condition that a certain quantity of labour shall be employed per acre in *bonâ fide* mining has been found to work best. For the present, therefore, we would propose to authorise the Government of Madras to grant gold-mining leases of Government lands, in lots of from one to thirty acres, for a term of ten to twenty years; and at a rent of five rupees an acre, subject to the condition that not less than five labourers are regularly employed per acre on *bonâ fide* mining operations in such manner as the Government may approve. The leases should be liable to forfeiture on failure of this condition, or failure to pay rent, as soon as either failure had continued for a period of six months; and should be renewable, at the lessee's option, on such terms as the then Government may settle, at the expiration of the original term. The Governor of Madras in Council would be declared to be in each case the final arbiter whether the lessee had, or had not, fulfilled the conditions of his lease.

We would propose thus to leave wide discretion to the Local Government with reference to the term of each lease and the area comprised therein. We do not propose to levy any royalty or other tax, for the present, on the industry, because we deem it most important to attract capital to the Wynaad gold-fields. The cost of bringing machinery for quartz-crushing to the spot will be heavy; the pioneers of the undertaking will have to buy their experience in many directions; and it is very undesirable that the first ventures now to be made should be unsuccessful.

11. If your Lordship approves the foregoing sketch of the terms on which gold-mining leases of Government lands might be granted, we shall authorise the Government of Madras to act thereupon, and we shall cause draft leases to be drawn up by our legal advisers.

12. There is apparently ground for believing that some of the best gold reefs that are known in India lie in the estates of the Rája of Nellambor and of other private proprietors. The Alpha Gold Company's works were opened in the Nellambor lands. As yet the Rája has made his own terms with companies intending to carry on gold-mining; and at present we are not prepared to urge the Madras Government to undertake legislation with a view of compelling private landowners to give gold-mining leases on any particular terms, or against their will.

13. We shall be glad to be favoured with early instructions from your Lordship, not only on the subject of the terms on which mining leases should be granted in the Wynaad, but also on the three questions raised in paragraph 2 and answered in paragraph 7 of the present despatch. And we solicit your Lordship's confirmation of our orders directing that, in all future sales or agricultural leases of waste lands in any part of India, mines and minerals found on such lands shall be reserved to the State, together with all convenient powers for working and getting and carrying them away.

From the Secretary of State for India to the Government of India,—No. 35 (Revenue—Minerals) dated India Office, London, the 25th March 1880.

I have considered in Council your letter, with accompaniments,* dealing with the important questions of the general rights of the State to minerals in India, of modifications of the Waste-Land Rules necessary to secure these rights, and of the terms on which applications to mine in Government waste lands in auriferous tracts shall be complied with.

* No. 7 (Home, Revenue and Agricultural Department) of 1st September 1879.

2. You point out that, regarding general State rights in minerals, three distinct questions have to be considered. In the first place, you hold, and I concur in your view, that the royal prerogative, as it obtains in England in respect to gold and silver mines, does not prevail in British India, at least outside the presidency towns. You proceed to infer that grantees of waste lands, whether or not the grants expressly comprise all products above and below the surface, are in the absence of provision to the contrary, entitled to mines of gold and silver found thereunder. If this proposition be limited to grantees of waste lands "in fee simple" under the rules framed in different provinces in accordance with the instructions given by my predecessor, Sir C. Wood, in his despatch No. 14 of 1862, I do not dispute it. But I must point out that the expression "grantees of waste land," used without limitation, might be held to include persons who have received, under ordinary terms of settlement, the proprietary rights in lands formerly waste and unoccupied; and to such grantees this view does not apply.

3. As regards the second question, whether, apart from the prerogative, the Crown in India can assert a right to gold, silver, and other minerals found in proprietary lands, you are disposed to agree with Messrs. Bell and Evans that, in the permanently-settled districts, the State does not possess such right. This was the view arrived at by my predecessor, Sir C. Wood, after consideration of Mr. Millet's reports, dated 26th March 1842. But, without weighing this opinion against that of your learned Advocate General, I am disposed to think that even if the legal right to minerals in permanently-settled estates could be established, it would not be desirable to enforce it. I agree with you that the indirect advantages resulting from making available the mineral resources of India are likely to be more valuable to the State than any direct returns; and I therefore consider that it would not be desirable to enforce the right of the State, supposing that such right can be established to mines in permanently-settled estates. Industries requiring skilled and scientific management and the extensive application of capital have flourished under the permanent settlement: and I apprehend that, speaking generally, the landholders of the Lower Provinces are sufficiently alive to their own interests either themselves to develop the mineral resources their estates may contain, or to afford facilities to others to do so.

4. This, however, does not apply to many other parts of India. I look upon it as pretty certain that the mineral resources of their lands will not be effectually worked by the present proprietors themselves of Madras or Bombay, or by the village communities of Northern India: and I apprehend that other promoters of mining enterprise would be likely to meet with considerable obstacles from intricacies of tenure and the difficulty of dealing with numerous small landholders. I consider, therefore, that care should be taken to reserve all State's right to minerals which still exist. And I am of opinion, especially with reference to the views of the Madras Government mentioned in paragraphs 3 and 6 of your letter, that, in the absence of any distinct judicial precedent or of established law or practice, such rights should be presumed still to exist throughout India. I take it that the notion that payment of an assessment based on the agricultural value of land, and intended to cover the right of cultivation, conveys property in minerals below the surface of the soil is essentially a modern one, and would never have occurred to the Native Governments to which our own succeeded. I approve therefore of the instructions you proposed (paragraph 6 of your letter) to give to the Government of Madras on this subject. With regard to the other provinces,

you state that no general rule, universally applicable, can be laid down, either that minerals found in proprietary lands belong to the State, or that they do not so belong. But, speaking generally, in the North-West Provinces it was ruled, but not, as it appears, by judicial authority, that when the surface is private property, the ownership extends, in default of special reservations, to what is below the surface. The precise degree of authority possessed by this ruling should, however, receive further consideration. In the Central Provinces and Berar the full right of Government to minerals has been reserved at settlement, while in the Punjab and Ajmere, and, it may be added, in the Bombay Presidency,* it has been declared by legislation that mines are the property of Government. You conclude therefore that whenever the question as to the right of the State to minerals found in proprietary lands actually arises, it will have to be answered for that locality in accordance with practice and precedent. But that where the nature and extent of proprietary rights are still unsettled, and where custom and practice regarding mines has been established, opportunity should be taken to declare by legislation that mines are State property. With these views I fully concur.

* Section 69 of the New Land-Revenue Code.

5. With regard to the third question, you consider that where proprietors of lands temporarily settled are held to be the owners of the minerals they may contain, such mineral resources may be taken into account for assessment on resettlement. In this view I concur but request that care may be taken not to confer proprietary rights in minerals by including them among assessable assets where such ownership has not been proved previously to exist.

6. Upon the second point discussed in your letter,—the modification of the Waste-Land Rules suggested by the Government of Madras,—I agree with you that, in future, sales and leases of waste lands for agricultural purposes should be generally made subject to reservation of the full right of the State in mines and minerals, and of right of access and other reasonable conveniences for working them on behalf of Government, or the assignees of Government. I approve the circular you have issued on this subject, and sanction the necessary modification of the Waste-Land Rules.

7. Regarding the last subject discussed in your letter,—the terms on which applications to mine in Government waste land in Wynaad and similar auriferous tracts shall now be granted,—you point out that, if gold should be largely produced in India, the effect on exchanges would be highly beneficial, and that it is consequently of great importance that the gold sources in India should be worked to the best advantage. You consider therefore that the mining terms granted by Government should be as liberal as possible without encouraging undue speculation, and you deem it of importance thus to attract capital to the Wynaad gold fields. You have ascertained that Australian experience is that the largest indirect advantage to the State is secured by making mining leases simple and liberal, on the one condition that a certain quantity of labour is employed per acre on *bonâ fide* mining operations. You propose therefore to authorise the Government of Madras to grant gold-mining leases of Government lands, in lots of from 1 to 30 acres, for terms of 10 or 20 years, at a rent of Rs. 5 per acre, on condition that not less than five labourers per acre are regularly employed on *bonâ fide* mining operations, in such manner as Government may approve. Power will be given to the Government of Madras to enforce fulfilment of these conditions, and the leases are to be renewable at the expiration of the original period on such terms as the Madras Government may then settle. You thus leave to the Government of Madras wide discretion with reference to the term and area of each lease, and you do not propose for the present to levy any royalty or other tax on the industry.

8. These arrangements appear to me to be judicious, and I approve them. With reference, however, to the last sentence of the preceding paragraph, and also to the last clause of paragraph 7 of your letter, I am of opinion that it should be made clear that for the term of leases now granted there will be no liability to any future royalty or other tax in addition to the rent, with the exception of any taxation which may hereafter be found necessary to provide, at the expense of mining communities,—the expenses of special police, communications, water-supply, sanitation, or other similar administrative arrangements needful for their own protection or convenience.

9. Finally, I have to observe that the arrangements you now propose appear to refer to mining operations in Government waste lands only. Should, however, it be decided that mineral rights in any owned or occupied lands in Madras are vested in Government, and should gold be discovered in any such lands, I presume that, with due regard to the rights of the cultivating proprietors, mining privileges will be granted on terms similar to those now approved for Government lands.

From the Officiating Secretary to the Government of India to all Local Governments and Administrations,—No. 1-40—48 (Mineral), dated Simla, the 15th May 1880.

In continuation of my Circular No. 2-11—19, dated the 1st September 1879, I am desired to forward copy of a despatch No. 35, dated 25th March 1880, from the Secretary of

State for India, regarding rights of Government to minerals in this country. The policy of the Government of India, as already announced, is generally approved, subject to certain additions to be noticed below.

2. The most important declaration contained in the despatch is that expressed in the fourth paragraph. Hereafter, except in permanently settled estates, it will be presumed throughout India that, in the absence of any distinct judicial precedent or proof of established usage, the State has a right to minerals.

3. Attention is invited to paragraph 2 of the despatch, under which the ruling that grantees of waste lands, whether or not the grants expressly comprise all products above and below the surface, are, in the absence of provision to the contrary, entitled to mines of gold and silver found thereunder, is limited to grantees of waste land "in fee simple," made in accordance with the rules framed upon the intructions given in Sir C. Wood's despatch No. 14 of 1862. Should any question hereafter arise in respect to grants of waste land made on other terms, Local Governments and Administrations will have to consider, in each class of cases, what is the specific effect of the form of grant regulating them as touching rights to minerals. The general ruling above quoted must be held not to apply to ordinary cultivating leases made in the course of settlement operations, or in the routine of district revenue work.

4. The direction in paragraph 5 of the despatch, to avoid conferring proprietary rights in minerals by including them amongst the assessable assets where such ownership has not been previously proved to exist, will be duly observed in making temporary settlements. The view of the Government of India, that where proprietors of temporarily-settled lands have been judicially held to be owners of minerals contained therein, such mineral resources may be taken into account for assessment on resettlement, has been accepted by the Secretary of State. But, as explained in paragraph 2 above, in the absence of a judicial decision, the presumption will be that such landholders are not owners of the minerals underneath the surface of their lands.

5. With reference to paragraph 6 of the despatch, I am to request that the rules regarding the sale and lease of waste lands for agricultural purposes in force in may be modified, so far as may be necessary, to make leases and sales under them subject to reservation of the full right of the State in mines and minerals, and of right of access and other reasonable conveniences for working them on behalf of Government or the assignees of Government. Full publication should be given to the modifications of rule made under these instructions; and copies of such orders as may be passed by the on the matter should be forwarded to this Department for information.

APPENDIX M.

(See Rule 42:)

(1) FORM OF PROCLAMATION AND WRITTEN NOTICE OF SALE OF ATTACHED PROPERTY.
(Under Section 165 of Bombay Act V of 1879.)

Whereas the property of hereinunder specified has been attached on account of the Government assessment Rs. due by the said ; and whereas it is necessary to recover the said amount by sale of the said property, together with all lawful charges and expenses resulting from the said attachment and sale: (Notn. N 4297, B. G., 1884, P I., p. 417.)

Notice is hereby given that on the day of 189 , at o'clock A.M. A. B., the Mámlatdár of (or other person appointed) will, at in Táluka in this District, sell by auction to the highest bidder and without reserve, the right, title and interest of the said in the property hereinunder specified, and every power of disposing of the same or any of them or of the profits arising therefrom which the said may now consistently with the law exercise for his own benefit.

Moveable Property.

1	2	3	4	5	6
Lot No.	Number and description of articles.	Where attached.	Where now placed.	When to be viewed.	Whether the sale is subject to confirmation or not.

Immoveable Property.

1	2	3	4	5	6	7	8	9
Lot No.	Description of Lot, including local situation, supposed or estimated rent or annual value, and, if leased, for how long, on what terms, and to whom.	Survey Number, Municipal number and other fiscal designation.	Government Revenue, including any Local Cess, any other known fiscal charge resting on the Lot.	Present occupant.	(Here enter any other particulars the Collector may see fit.)			

N.B.—No guarantee is given of the title of the said or of the validity of any of the rights, charges or interest claimed by third parties.

(Signed)

Collector.

---

(2) FORM OF PROCLAMATION AND WRITTEN NOTICE OF SALE OF RIGHT OF OCCUPANCY OF UNOCCUPIED LAND.

Notice is hereby given that the right of occupancy of the undermentioned unoccupied land, situate in the village of in the Mahál and the Táluka of the District, will be put up to public auction at on day the day of 189 , at or after o'clock A. (or P.) M.

The written (or printed) conditions of sale signed by may be seen on application, during office hours, on any office day before the day of the auction, to the Mahálkari (or Mámlatdar) of or, at the time of the auction, to the officer who conducts the same, and intending bidders are warned that they should ascertain the said conditions before bidding.

Description of the land.

(*Here give a full description of the land, viz. the Survey Number or Numbers, if it has been surveyed, if not, its boundaries; the class of land, i.e., whether it is dry-crop land, garden land, or a building site, &c., the area of the land, adding 'be the same more or less'; the assessment, if any, at present payable for the land, and the term for which that assessment has been fixed.*)

Dated the day of 189.

(Signed)

Collector (or other competent officer).

MEMORANDUM

OF THE

CONDITIONS OF SALE OF THE OCCUPANCY-RIGHT OF THE FOLLOWING UNOCCUPIED LAND TO BE HELD AT ON THE DAY OF 189 , viz.:—

Survey No. , area about acres, gunthás, assessment Rs. , in the village of , Táluka , and bounded on the north by on the south by on the east by on the west by and

---

1. The sale shall be subject to confirmation by the Collector, or by some other revenue officer duly authorized to confirm the same.

2. It shall be in the discretion of the Collector, or other officer aforesaid, to accept or not to accept the highest bid.

3. The highest bidder shall have no ground for complaint, if the sale be not confirmed, or if there be delay in the confirmation of the sale.

4. The party who is declared, subject to confirmation of the sale as aforesaid, to be the purchaser shall be required to deposit immediately 25 per centum on the amount of his bid, and in default of such deposit, the occupancy right shall forthwith be again put up and sold.

5. If the proceeds of the sale, which is eventually made, be less than the price bid by such defaulting purchaser, the difference shall be recoverable from him by the Collector as an arrear of land revenue.

6. The full amount of the purchase-money shall be paid by the purchaser before sunset of the fifteenth day from that on which the auction takes place, or if the said fifteenth day be a Sunday or other authorized holiday, then before sunset of the first office day after such fifteenth day.

7. In default of payment, within the said period, of the full amount of the purchase-money, the deposit, after defraying thereout the expenses of the sale, shall be forfeited to Government, and the occupancy-right shall be resold, and the defaulting purchaser shall forfeit all claim to the occupancy-right, or to any part of the sum for which it may be subsequently sold.

8. If the sale is not confirmed, the purchaser shall be entitled to receive back his deposit, or his purchase-money, as the case may be.

9. The purchaser shall, previously to entering upon occupation of the land, obtain the permission, in writing, of the Mámlatdár or Mahálkari under section 60 of the Land Revenue Code. Such permission will only be accorded on the purchaser's paying local-fund cess at the rate of one anna in the rupee of the amount on the purchase-money, and on his executing an agreement (which should be executed within thirty days of the receipt of intimation by him of the confirmation of the sale), in the form of Appendix D to the rules framed under the Land Revenue Code. If the land is occupied without such permission being first obtained the occupation will be liable to be treated as unauthorized under section 61 of the Land Revenue Code.

10. The purchaser will have to pay the assessment of the land and local-fund cess thereon commencing with the year
Provided that, if without his own fault, he do not obtain possession of the land in due time to make use of it that year, he shall not be chargeable with the assessment and local-fund cess thereof till the next following year.

11. The sale is also subject to all rights of way over the land and all rights of the public to the use of any tank or burial ground existing on the land, and the purchaser shall not be entitled to cultivate or make any other use of the land subject to such rights of way or occupied by any such tank or burial-ground.

12. The sale is subject to the right of Government to the following trees standing in the land, which have been specially reserved (*viz.*) :—

(*Here enter the number and description of trees to be reserved.*)

The trees, other than the reserved ones, are sold along with the occupancy right.

13. (*Where there are toddy and other juice-producing trees, the following condition should be inserted* :—)

Government reserves to itself the right of prohibiting the extraction of the juice of all cocoanut, toddy, bherli-mád, shindi, or other trees growing in the land, and of permitting any person to extract it on certain conditions. The purchaser must afford all reasonable facilities and conveniences to any person licensed by, or under the authority of, Government, to extract juice from any such tree.

(Signed)

Collector (or Mámlatdár or Mahálkari, *as the case may be*).

(Approved by G. R. No. 1189, 13th February 1886, R. D.)

APPENDIX N.

Partition of Estates by the Collector.

1. In the division of an estate ordered by the decree of a civil court paying land revenue to Government, the Collector is bound by the rules laid down in section 113 of the Land Revenue Code whenever they are applicable. If a court assigns rights in specified areas in survey numbers of less extent than the minima prescribed under section 98 of the Code, these rights cannot be registered in the Government accounts, or be otherwise recognized by Government. (G. R. 7052 of 23rd November 1881.)

2. Circular No. 83, at pages 46 and 47 of the High Court Civil Circulars having been cancelled, the Governor in Council is pleased to direct that in future Collectors shall be left free to use their powers under the Bombay Land Revenue Code for the levy of the costs of the partition in execution of a civil court's decree of estates paying revenue to Government. (G. R. No. 1993, 14th April 1890, J. D.)

APPENDIX O.

(Notn. No. 4213, B. G. G., 1881. Pt. I., p. 396.)

In exercise of the powers given by section 55 of Bombay Act V of 1879, the Governor in Council authorizes the Commissioner in Sind to fix rates for the use by landholders and others of water, the right to which vests in Government, for the cultivation of rice on any land not assessed and entered in the Survey Registers as rice land.

2. The amount of such rate shall be subject to the approval of Government, and shall, after sanction, be notified in the office of the Mukhtyárkar of the táluka in which the land on account of which the rate is levied is situated.

3. Any person desiring to grow rice in land not assessed as rice land shall make an application in writing to the Mukhtyárkar, or other officer duly authorized to receive such application, for permission to make use of the supply of water needful for growing rice, stating if he requires it for one year only or permanently; and if any person cultivates rice in such land without such permission, he shall be charged with double the rate he would otherwise have been required to pay had he applied for and obtained permission.

4. All persons, who now hold or may hereafter apply to take up lands assessed and recorded in the Survey Registers as rice lands, shall, as soon as possible after the publication of these Rules or on application to take up such lands, be tendered a list of such rice lands then being or about to be in their occupation, and rice shall not be grown on any number not included in such lists except on payment of the extra rate.

APPENDIX Q.

Form of security bond to be taken from treasurers or other officers of Government entrusted with the charge of public money.

(G. R. 3739 of 2nd Oct. 1882, F. D., and G. R. 1894 of 21st May 1883, F. D.)

KNOW all men by these presents that (Principal) of (1st surety) (2nd surety), of are held and firmly bound unto the Secretary of State for India in Council in the sum of Rs. to be paid to the said Secretary of State in Council, his successors or assigns, or his or their certain attorney or attornies for which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, and representatives jointly, and every two of us bind ourselves, our heirs, executors, administrators, and representatives jointly, and each of us binds himself, his heirs, executors, administrators, and representatives severally, firmly by these presents, sealed with our seals, dated this day of 189 , and each of us the said doth hereby for himself, his heirs, executors, administrators, and representatives, covenant with the said Secretary of State in Council, his successors and assigns, that if any suit shall be brought touching the subject-matter of this obligation or the condition hereunder written in any court, subject to the High Court of Judicature at other than the said High Court in its Ordinary Original Jurisdiction, the same shall and may at the instance of the said Secretary of State in Council, be removed into, tried and determined by the said High Court, in its extraordinary original jurisdiction.

WHEREAS the above bounden was on the day of 189 appointed to and now holds and exercises the office of Treasurer at ; AND WHEREAS, by virtue of such office, the said has, amongst other duties, the care, charge, and oversight of and responsibility for the safe and proper storing and keeping in the places appointed for the custody thereof respectively, of all money, specie, bullion, coin, jewels, Government currency notes, stamps, and Government securities of whatever description, gold, silver, copper, lead, goods, stores, chattels or effects stored and used at, received into or despatched from the Treasury of or paid, deposited or brought into the said Treasury by any person or persons whomsoever and for any purpose or purposes whatsoever; AND WHEREAS the said as such Treasurer as aforesaid is also responsible that all such moneys, specie, bullion, coin, jewels, Government currency notes, stamps, and Government securities of whatsoever description, gold, silver, copper, lead, goods, stores, chattels, or effects (hereinafter together only called "the said property") are and is of full measure and good quality when received into the said treasury and until he has duly accounted therefor and for every part thereof in manner hereinafter referred to; AND WHEREAS the said is bound, whenever called upon so to do, to show to his superior officers that the said property and every part thereof save so much thereof as he has duly accounted for is at all times intact in the places aforesaid and is also bound to attend for the purpose of discharging his duties aforesaid at such times and places as his superior officers may appoint; AND WHEREAS the said is further bound to keep true and faithful accounts of the said

property and of his dealings under written orders of his superior officers therewith respectively in the from and manner that may from time to time be prescribed under the authority of Government, and also to prepare and submit such returns and such accounts as he may from time to time be called upon to do; AND WHEREAS the bulk of the said property remains as well in the care, charge and custody of the Treasury officer for the time being at as of the said but as between himself and the said Secretary of State for India in Council he the said is alone responsible and answerable therefor and for every part thereof; AND WHEREAS the responsibility of the said for the said property and every part thereof does not cease until the same has been duly used under the written orders aforesaid and accounted for or been duly despatched from the said Treasury and delivered over to and a full and complete discharge therefor obtained from such persons and places as the district officer of or other the person exercising his functions for the time being under the sanction of the Government of may direct; AND WHEREAS the said in consideration of his said appointment has delivered to and deposited with and endorsed over to as such district-officer as aforesaid Government securities to the extent of Rs. of which the numbers, amounts and other particulars are set forth and specified in the Schedule hereunder written for the purpose of in part securing and indemnifying the said Secretary of State in Council, his successors and assigns, against all loss and damage which he or they might or may in any way suffer by reason of the said property or any part or parts thereof being in any way consumed, wasted, embezzled, stolen, misspent, lost, misapplied or otherwise dishonestly, negligently, or by or through oversight or violence made away or parted with by himself the said or any person acting for him in his said office during his absence or otherwise or by any sub-treasurers, servants, clerks, sircars, cash-keepers, poddars, coolies or other persons, nominated or accepted by or serving under him the said or by any other person or persons whomsoever, whether in the service of Government or otherwise; AND WHEREAS the said (principal) and the said (1st surety) and (2nd surety) as his the said sureties in that behalf have entered into the above bond in the penal sum of conditioned for the due performance by him the said of the duties of the said office aforesaid and of other the duties appertaining thereto or which may lawfully be required of him and the indemnity of the said Secretary of State in Council and his servants against loss from or by reason of the acts or defaults of the said and of all and every the persons and person aforesaid: Now the condition of the above written bond is such that if the said has whilst he has held the said office of Treasurer as aforesaid always duly performed and fulfilled the said duties of the said office and other the duties aforesaid and if he the said shall, whilst he shall hold the said office, always duly perform and fulfil all and every the duties thereof aforesaid, and further if the said and do and shall indemnify and save harmless the said Secretary of State in Council, his successors and assigns, the Government of and all and every the person or persons who from time to time has or have held or shall hold or exercise the said office of district officer while the said has held or shall hold and enjoy the said office of Treasurer as aforesaid of and from all and every loss and damage, which during the time the said has held, executed and enjoyed the said office, has happened or been sustained, or shall or may at any times or time hereafter during the time that he the said or his agent or agents, nominee or nominees, shall hold or exercise or act in the said office happen to or be sustained by the said Secretary of State in Council, his successors or assings, the Government of or the said district officer, for the time being, by, from or through the means of the neglect, failure, misconduct, disobedience, omission or insolvency of the said or his said agent or agents, nominee or nominees, or of any of the sub-treasurers, sevants, clerks, sircars, cash-keepers, poddars, coolies or other persons nominated, accepted by or serving under him the said or his said agent or agents, nominee or nominees, or by, from or through the consuming, wasting, embezzling, stealing, misspending, losing, misapplying or otherwise dishonestly or negligently, or through oversight or violence, making away or parting with the said property or any part or parts thereof, by any person or persons whomsoever, whilst he or the said has acted or shall continue to act in the said office of Treasurer as aforesaid, then this obligation to be void and of no effect, otherwise the same shall be and remain in full force and virtue: Provided always and it is hereby agreed and declared that neither of them the said and shall be at liberty to terminate their suretyship except upon giving to the district officer for the time being of the Government of six calendar months' notice in writing of his or their intention so to do and their joint and several liability under this bond shall continue in respect of all omissions and defaults on the part of the said until the expiration of the said period of six months; Provided always and it is hereby declared and agreed by the said and with the said Secretary of State in Council, that the Government Promissory Notes for Rs. so deposited as aforesaid respectively or such other Government security or securities to the same amount as the district officer for the time being of the Government of may consent from time to time to accept and receive and shall accordingly receive in lieu or exchange for the same and the

G. R. 3378, F. D., 9th Dec. 1885.

interest thereof respectively shall be and remain with the said district officer for the time being or the Government of as and for part and additional security to the said Secretary of State in Council, his successors and assigns, for the purposes aforesaid with full power to the said Secretary of State in Council, his successors or assigns, or his or their officers and servants, duly authorised in that behalf, from time to time as occasion shall require, to sell and dispose of the said Government securities or a sufficient portion thereof with the interest thereon and to apply the proceeds thereof in and towards the indemnity as aforesaid of the said Secretary of State in Council, his successors and assigns, as the case may require, but nevertheless the interest of the said Government securities may in the meantime be paid over as the same shall be realised by the said district officer for the time being or the Government of if they shall think fit to the said : Provided further and it is hereby expressly agreed and declared between and by the said and the Secretary of State in Council that it shall be lawful for the said with the consent of the said district officer or of other the person exercising his functions for the time being under the sanction of the Government of first had and obtained to change and substitue for the said deposit of Government promissory notes for Rupees or any part thereof or for any substituted notes from time to time other notes of the same or other loans of the same or greater value without in any way affecting the obligation of the said bond or the liability of the said and as such securities as aforesaid.

The Schedule above referred to

G. R. 3378, F. D., 9th Dec. 1885. And it is hereby lastly agreed and declared by and between the said [*Principal*] and the said [*one surety*] and [*other sureties*] as his the said [*Principals*] sureties and the said Secretary of State that on the vacation by the said [*Principal*] of his said office of the above-mentioned Government promissory notes for Rupees. or any notes that may be substituted therefor as aforesaid shall not be at once returned to him but shall be and remain with the said [*the authority with whom the notes are deposited*] for the term of six months as security against any loss that may have been incurred by the Secretary of State owing to the neglect or default of the said [*Principal*] or any other person or persons as aforesaid and which may not have been discovered until after the vacation of his appointment by the said [*Principal*] ; *Provided always* that the return at any time of the said Government Promissory notes shall not be deemed to affect the right of the said Secretary of State to take proceedings upon the said bond against the said [*Principal*] and [*sureties*] in case any breach of the conditions of the said bond shall be discovered after the return of the said Government Promissory notes.

NOTE.—It is not necessary or possible that all security bonds, to be executed in future, shall be drawn up in the exact form which is here prescribed. Modifications will no doubt be required to render the form of agreement suitable in particular cases, but it is important that there should be as little difference as possible in the nature of the obligations of the signatories to the bond, and the interests of Government must in every instance be fully secured.

The Revenue authorities are, subject to the orders of Government, responsible for seeing that adequate security is taken from any of their subordinates (including all officers in district and sub treasuries) who may be entrusted with the custody of public money. (G. R. 3739 of 2nd October 1882, F. D.)

The above form is to be used in cases in which Government paper is deposited under section 23 of the Land Revenue Code : in other cases the form prescribed by section 23 of the Code must be used. (G. R. 7522 of 26th October 1882.)

It should be left optional with subordinate Revenue officers who are entrusted with the charge of public money either to deposit Government Promissory notes, or to execute a bond in the form contained in Schedule B. of the Bombay Land Revenue Code of 1879.) (G. R. 3031 of 17th August 1883, F. D.)

Form of lease to be granted to an occupant who takes up land on special terms under No. 19 of the Land Revenue Code Rules.

This is to certify that, with the previous sanction of the Commissioner (in Sind, *or as the case may be*)

of has been granted the occupancy of Survey No. in the village of in the Táluka of the District for a term of years from the day of 189 , subject to the payment of land revenue as follows (viz.):

(*a*) for the first years, A. D. 189. to 189 , nil ;

(*b*) for the next years, A. D. 189. to 189 , a reduced assessment of Rs. ;

The reason for the grant of the said occupancy on the favourable terms aforesaid is that the lessee has undertaken, at his own expense, within a period of from the day of 189 , to carry out, to the satisfaction of , the following work, whereby the cultivation of the said survey number will be improved (or rendered feasible, or *otherwise, as the case may be*), *viz.*

(Here describe as accurately as possible the work to be executed).

The conditions on which this lease is granted are:

(1) that the lessee shall completely execute the work aforesaid to the satisfaction of the said within the period above mentioned;

(2) that he shall keep the said work when executed in good order and repairs to the satisfaction of the said until the expiry of this lease;

(3) that if the lessee shall fail to perform either of the aforesaid conditions he shall be liable, notwithstanding anything hereinbefore written, to pay the full assessment of the land comprised in this lease, amounting to Rs. , for the year during which such failure shall take place and for every subsequent year of the term of this lease:

(4) that the lessee shall be entitled, on the expiry of this lease, to retain the occupancy of the land herein comprised, subject to the payment of the full assessment from time to time fixed thereupon under the law and rules in force in this behalf, on his executing an agreement in the form prescribed for persons who intend to become registered occupants.

This lease is executed on behalf of the Secretary of State for India in Council, by order of the Governor of Bombay in Council, by the Collector of , and under his seal of office, this day of 189 .

Seal.

(Signed)

Collector.

I the aforesaid lessee do hereby accept this lease on the terms and conditions therein mentioned.

Signed by

In the presence of

(Signed)

Lessee.

(Approved by G. R. 7033, 3rd September 1884.)

ADDITIONAL ORDERS AND OPINIONS.

Section 31.

Village Officers purchasing at public sale.

Clauses (1) and (2) of section 31 of the Land Revenue Code should be construed strictly in the case of stipendiary village accountants and permission should not be given to them to engage in money lending or to purchase lands at public sales. Clause 3 if strictly enforced would prohibit them from holding any lands paying revenue to Government. His Excellency in Council does not however object to the holding of hereditary lands by stipendiary village accountants or absolutely to their holding of lands purchased otherwise than at a public sale. The section requires that every revenue officer who holds land paying revenue to Government in the district in which he is employed should obtain permission to continue to hold it and the Collector can give or withhold permission according to the merits of each case, taking care that his orders are not unduly harsh. If the Collector considers that the position of a talâti as a holder of land in his own charge, tâluka or district, conflicts in any case with the proper performance of his duty as a village accountant, he can have him transferred. (G. R. No. 5635, dated 31st July 1883, R. D.)

Section 32.

Maximum period of suspension.

The maximum period for which suspension from office should be awardable as a specific punishment under section 32 of the Land Revenue Code should be fixed at six months. This is the period mentioned in the Hereditary Offices Act and in the Bombay Village Police Act. It appears hardly practicable to fix any maximum period for suspension pending or during inquiry into alleged or suspected misconduct, but in cases where an officer is suspended for such a cause the inquiry should be carried out as promptly and speedily as possible and no unnecessary delay should be permitted to occur. Such an inquiry would ordinarily not occupy a very long period, but when it is not completed within two months from the date of the suspension of the official concerned a monthly report by the Collector should be furnished. (G. R. No. 9981, dated 19th December 1884, R. D.)

Application of section 58 of the Land Revenue Code.

Receipts in alienated villages.

Section 85 prohibits the receipt of his rents direct by any inámdár in whose village there exist an hereditary pátil and village accountant. If the latter officers fail to account to the inámdár for his dues, or if there are no such officers in his village, the Code does not prohibit his making his levies direct. But whether he recovers his dues direct or through the village officers, the second paragraph of section 58 requires him to give a written receipt for every payment of rent or land revenue made to him, and such receipts must be countersigned by the village accountant, if any. This latter provision shows that the paragraph in question is not intended to operate only when an inámdár recovers direct. Even when payments are received by an inámdár through the village officers he must sign the written receipt. The village accountant must countersign it merely. (G. R., R. D., No. 5804 of 4th August 1883.)

"It does not appear to be legally necessary that an inámdár should be present when the village officers are making the collections or that he should give an immediate receipt for each individual payment the moment it is made.

"2. It would suffice if all the receipts (which should be already countersigned by the village accountant) were brought to the inámdár to sign when the collections had been completed, or at stated intervals. There is no reason why these receipts should not be given in the rayat's receipt-books, whenever that would be the most convenient course." (G. R. No. 9107 of 18th November 1884, R. D.)

Section 85 of the Bombay Land Revenue Code applies to payments in kind as well as to cash payments. Village officers ought to be present at the time of payment in kind which could then be made through them and they would countersign the receipt as required by clause 2 of section 58. (G. R. No. 6020, dated 15th August 1883, R. D.)

Application of section 61.

Section 61 inapplicable to alienated villages.

Section 61 of the Revenue Code is not applicable to alienated villages or lands. An inámdár's proper remedy, in case of unauthorised occupation of his land, is a suit in the Civil Court. (G. R. No. 5205, dated 25th June 1885, R. D.)

Application of section 72 of the Land Revenue Code.

Unregistered vendee of deceased occupant.

A registered occupant of a survey number died without known heirs, but before his death transferred the possession of his land to a third person by a deed of sale duly registered: the necessary corrections were not made in Government books.

"Under the latter part of section 79 of the Code, the Collector was not bound to recognize the deceased occupant's vendee.

"Section 79 was expressly inserted in the Code in order that the parties to transfers of occupancies might be made to feel the absolute necessity of obtaining a mutation of names in the Collector's books, and so, in time, the recorded occupants would always be found to be the actual occupants. (G. R. No. 3102 of 20th April 1883, R. D.)

Duty of Collector as to occupancy of deceased, intestate and without known heirs.

Memo. by L. R.:—"The ordinary law regarding the property of a person who dies intestate and without known heirs is that contained in section 10 of Regulation VIII of 1827. Under it the District Court appoints an administrator for the management of the property, and after he has had charge of it for about two years, it is sold under the orders of the High Court and the proceeds are 'deposited in the public treasury for the eventual benefit of all concerned.'

"2. Section 72 of the Revenue Code excepts occupancies belonging to Hindus, Mahomedans or Buddhists from this general law, and directs that in their case 'the occupancy shall be disposed of by the Collector by sale subject to the provisions in force * * * for the sale of forfeited occupancies in realization of the land revenue' and that the net proceeds only shall be subject to the provisions of the ordinary law regarding intestate property. The effect of this is that the occupancy of a Hindu, Mahomedan or Buddhist who dies intestate and without known heirs, instead of being managed and eventually sold by the Názir of the District Court (who is generally the administrator appointed under section 10, Regulation VIII of 1827), is sold by the Collector, and the net proceeds are made over by the latter to the Názir for credit to the deceased's estate.

"3. The doubt is whether when occupancies are thus sold by the Collector, they are to be sold 'freed from all tenures, incumbrances and rights created by the occupant,' like forfeited occupancies (*vide* section 56 of the Revenue Code) or whether the right, title and interest of the deceased occupant merely are to be disposed of.

"4. The intention of section 72 of the Code appears to be to prevent the occupancies of persons dying intestate coming under the management of the District Court's administrator. The section was inserted by the Select Committee who, in paragraph 32 of their final report on the Revenue Code Bill, dated 1st May 1877, said its purpose was 'to enable the Collector to dispose of the occupancy of an occupant dying intestate and to stay the operation of the law regarding property left by persons dying intestate until the occupancy has been sold and arrears due to Government secured.' Much correspondence and trouble are saved by keeping the control of such property in the hands of the Collector, who is obviously far better able than the District Court's Názir to manage and sell it to the advantage of the deceased's estate. It was not the intention of the Legislature to forfeit in such cases subordinate rights created by the deceased occupant. The words in section 72 'subject to the provisions * * * in force for the sale of forfeited occupancies in realization of the land revenue' may, at first sight, be thought to bear this meaning, but it ought not to be concluded that it was the intention of the Legislature thus to abrogate vested rights unless such intention is very clearly and unmistakeably indicated in the language of the enactment. The words quoted do not appear to mean more than that an intestate occupant's occupancy should be sold subject to the same rules for regulating the sale as a forfeited occupancy, and this construction of them is consistent with the apparent purpose of the section. There is no reason to think that the Legislature contemplated attaching the same penal consequences to an occupant dying intestate and without known heirs as to the failure of a living occupant to pay the land revenue due on his occupancy. Such a provision would be unjust, and whenever the language of an enactment 'admits of two constructions, according to one of which the enactment would be unjust * * * and according to the other it would be reasonable and wholesome, it is obvious that the latter must be adopted as that which the Legislature intended.' (Maxwell, Interpretation of Statutes, 179).

"5. On these grounds, under section 72 of the Revenue Code, all that the Collector sells is the right, title and interest of the deceased occupant, and subordinate rights are not affected by such sale. This was the opinion quoted in the preamble of Government Resolution No. 2711 of 26th April 1882—'the occupancy in this case is not forfeited by Government before it is disposed of by sale. It is 'sold as the heritable transferable property of the deceased occupant.'

"6. But although subordinate rights are not affected by the sale, still, as stated in the preamble to Government Resolution No. 3102 of 20th April 1883, if the deceased was a registered occupant the Collector is not bound to recognize his vendees or other subordinate holders. If the deceased person is the registered occupant, the Collector is not bound to recognize 'any person to whom any interest in any portion of the occupancy * * * has been assigned' (*vide* section 79 of the Revenue Code).

"7. It is not necessary that the Collector should hold an inquiry for the purpose of ascertaining 'whether the occupancy has not passed to some other person who is in lawful possession.' The Collector, if he held any such inquiry, would not be competent to pass any order determinative of the rights of the respective claimants and possibly many claimants would object to reveal their title to him. The title of the deceased should be sold for what it is worth, the purchaser making his own terms with, or taking such steps as he thinks fit against, other claimants. It may be that the purchaser of a deceased registered occupant's right, title and interest will sometimes acquire nothing by the purchase except the right to become the registered occupant. In such cases it will usually be to the interest of the assignee or of one of the assignees of the deceased registered occupant to become the purchaser.

"8. The words 'the Collector shall dispose of his occupancy by sale' in section 72 appear to leave the Collector no option. The right, title and interest of the deceased must be sold for what they will fetch. The reason of this is that the Collector, so far as regards these occupancy rights of persons dying intestate, takes the place of the administrator appointed by the District Court under Regulation VIII. of 1827, and just as it was formerly the duty of the administrator to sell such rights for whatever they might fetch 'for the eventual benefit of all concerned,' so is it now the Collector's duty to realize by the sale of the deceased's right, title and interest whatever he can for the benefit of the estate.

"9. The word 'occupant' which is used in section 72 must be taken in its general sense, as defined in section 3, clause (16) of the code, and not be deemed to apply to registered occupants only. If the person who has died intestate and without known heirs is an occupant, but not a registered occupant, his right, title and interest will be sold by the Collector without affecting in any way the title of the registered occupant." (G. R. No. 783, dated 27th January 1885, R. D.)

Opinion of the Honourable the Advocate General.

1. In the case of a registered occupant such as described in section 72 of the Land Revenue Code dying intestate and without known heirs, and of another person claiming that the occupancy has been sold to him by the deceased though not transferred in the Government books, I am of opinion that the provisions of section 72 come into force, by which it is enacted that—

> "The Collector shall dispose of his occupancy by sale, subject to the provisions of this Act or of any other law at the time in force for the sale of forfeited occupancies in realization of the land revenue."

It is difficult not to consider the provisions of section 56 as being 'provisions for the sale of forfeited occupancies in realization of the land revenue' within the meaning of section 72. And having regard to the provisions in section 79—

> "That the Collector shall not be bound in any case to recognize any person to whom any interest in any portion of an occupancy or absolute holding has been assigned, unless the transfer has been recorded in the revenue records in accordance with the foregoing provisions,"

I think that the Collector is empowered to sell the occupancy of the deceased registered occupant without regard to the rights (if any) of the alleged vendee.

2. But I think that the Collector should exercise this power so as to interfere as little as possible with any right the existence of which is established to his satisfaction. In my opinion the provisions of section 81 which afford an alternative procedure in certain cases for the sale of a forfeited occupancy in realization of land revenue may properly be regarded as included among the provisions referred to in section 72. If therefore the Collector is satisfied that the occupancy has really been sold by the deceased registered occupant to the alleged vendee, and that such procedure will meet the justice of the case, I think that he may properly substitute the name of the alleged vendee in the revenue records for that of the deceased registered occupant.

3. I observe that section 56 enables the Collector to dispose of a forfeited occupancy under rules or orders to be made under section 214. I am not aware whether any rules have been made in this behalf under section 214; but if such rules have been made and the Collector has power thereunder to dispose of a forfeited occupancy without prejudice to rights previously created by the occupant, it seems desirable that he should adopt such mode of procedure in cases similar to the one suggested under section 72, when the case does not seem to him to be one in which the provisions of section 81 can be properly applied. (Concurred in by Government in G. R. No. 10023, dated 14th December 1885.)

Memo. by L. R.:—

Section 72 inapplicable to alienated lands.

"The word "occupant' cannot be held to include a holder of alienated land and the Collector should not, I think, attempt to take action under section 72 of the Revenue Code in the case of alienated holdings." (G. R. No. 3812, dated 13th May 1885, R. D.)

Memo. by L. R. :—

"Section 19 of the Bombay Village Police Act (Bombay VIII of 1867) imposes upon the police pátil the duty of taking charge of all unclaimed property and of reporting his proceedings to the Magistrate to whom he is subordinate. Property left by a person who dies intestate and without known heirs is 'unclaimed property' within the meaning of this section, and if, in addition to some moveable property, the intestate has left some land, inquiry will soon enable the Magistrate to determine whether the deceased was an occupant and whether, therefore, the Collector should take action under section 72 of the Revenue Code. As a matter of practice, I believe, every case of a person dying intestate is reported by the village officers to the higher authorities, whether under the provisions of section 19 of the Village Police Act, or otherwise, and there is little probability, I should think, of any case of any importance escaping notice. The Collector can only take action in the cases which are reported to him, and I do not think there is any need for special measures to ensure every case being reported. The number of occupants, not being registered occupants, who die intestate and without known heirs is probably inconsiderable." (G. R. No. 3813, dated 13th May 1885, R. D.)

Section 72. Procedure in case of occupants who are not registered, dying intestate, &c.

Memo. by the Acting L. R. :—

"2. Land wholly or partially exempt from the payment of Government land revenue is liable on the death of the last holder intestate and without known heirs, to be dealt with under section 10 of Regulation VIII of 1827, and the High Court may direct either (*a*) that it should continue under the management of an administrator appointed by the District Judge, or (*b*) that it be sold under the authority of the Court and that the proceeds be deposited in the public treasury for the eventual benefit of all concerned.

Action of Collector as to *alienated* land of deceased intestate without known heirs.

"3. If the latter course be taken, the exemption being a heritable transferable property, the land must necessarily be sold free from liability to assessment, as otherwise the person entitled to the proceeds would lose part of the value of the estate.

"4. But if this sale take place, Government must necessarily lose what, if there are no heirs or assignees of the intestate, Government would otherwise gain, viz., the right to the full assessment which might be levied on the extinction of all rights to exemption.

"5. In view of the opinion expressed by the Advocate General in his No. 74 of 12th June 1872, Government modified Resolution No. 1983 of 25th April 1872 by Government Resolution No. 2935 of 19th June 1872, by directing that the Collector should deal with such land subject to any order that may be made by the Civil Court under Regulation VIII of 1827, section 10.

"But the Resolution thus modified directs the Collector to declare the land *khálsa* at once, and leaves any heirs that may subsequently appear to be referred to Government. (*Vide* Nairne's Revenue Hand-book, page 538.)

"6. The Collector of Dhárwár points out that an order declaring the land *khálsa* may be practically set aside by an order of the District Judge appointing an administrator.

"7. The Collector adds that no executive order could operate to make the land *khálsa*.

"8. The difficulty referred to by the Collector of Dhárwár is one that could only arise when the Hight Court has directed the *sale* of lands wholly or partially exempt for the eventual benefit of all concerned.

"9. But this procedure would only be followed in cases in which no person had appeared and established a right.

"10. Before such procedure can be taken, section 10, clause I, requires a proclamation to issue calling upon the heir of the deceased or *any person entitled to receive charge of the property* to attend and prefer his claim, and under clause 3 of the same section, if any person appears and satisfies the Judge of his right to the possession of the property or any part of it as heir, executor, administrator *or otherwise*, it *shall* be delivered up to him.

"11. If no such person appear or establish such right there are two alternatives open to the High Court—

(*a*) to direct the property to continue under the management of an administrator for a further period, or

(*b*) to direct a sale.

"12. But if there be no heir, assign or other person claiming through the deceased intestate, the property lapses to the Crown by escheat.

1 Beng. L. R. O. C. 87.

The property vests in Her Majesty not by virtue of Regulation VIII of 1827, but by virtue of the territorial law of British India.

"13. On failure of heirs, the Collector, it appears to me, would be as much 'entitled to receive charge of the property' on behalf of Her Majesty, as any other person to whom rights accrued on the death of the deceased.

"14. If any heir subsequently appear, the result would be the same as if the estate had been claimed by a private person, whose right was afterwards found to be excluded by a better title.

"15. In such case Government would be responsible to such heir.

"16. But there is no necessity for a sale by the Court, nor do I think that the property could be sold, if the Collector claimed that he was entitled to receive charge of the property on behalf of Her Majesty.

"17. In order, however, to avoid the risk of litigation in such cases as to claims that might afterwards be brought forward, I think the High Court might be moved to direct under section 10, clause 4, that such property should continue under the management of an administrator, until such period had elapsed as would render the chance of any claim being preferred infinitesimally small, and Government might then through the Collector, put in their claim to the property as having passed to Her Majesty by escheat. The land could then be dealt with as proposed in Government Resolutions Nos. 1983 and 2935 of 1872, Nairne's Hand-book, page 538.

"18. The declaration that the land had become *khálsa* would no doubt be inoperative as against any person purchasing the property as the estate of the deceased under the order of the Court. But such an order could not, I think, be passed if the land were claimed by the Crown. For sale can only be directed when no one appears and establishes a right to receive charge of the property. Government appear to me to have as good a right to put in their claims and protest against such sale, as any other claimant to the estate of an intestate, and if it appear that there are no heirs, &c., the Courts would I think be bound to recognize the right of the Crown, and to direct delivery to its officers, on such claim being preferred, instead of directing a sale.

"19. The point has, so far as I can ascertain, never been decided, but there are several cases on record in which Government have claimed the right to specific property by escheat, and there is no law which requires that instead of taking the specific property, Government would be entitled only to the proceeds realised by its sale. Legislation is, therefore, I would submit, unnecessary.

"20. The question involved might perhaps be raised in a test case if desired, and if the High Court hold that intestate property must in all cases be sold whether the right of the Crown is put forward or no, steps might then be taken to modify the law as to the procedure to be taken in such cases. But I think the rights of the Crown do not depend on Regulation VIII of 1827 and that section 10, clause 4 only prescribes the procedure when no claim whatever is preferred to the property."—(G. R. No. 8407, dated 15th December 1888.—R.D.)

Section 86.

Exercise by Mámlatdárs and Mahálkaris of powers under sections 86 and 87 of the Land Revenue Code.

Assistance to superior holders in recovery of dues.

In districts where the practice still obtains, the Mámlatdárs may continue to exercise the same powers under sections 86 and 87 of the Land Revenue Code which they previously exercised under Regulation XVII of 1827. As regards Surat and Thána where the practice has been discontinued, His Excellency the Governor in Council is pleased to authorize the Collectors to delegate to the Mámlatdárs in their districts powers under sections 86 and 87 of the Code. (G. R. No. 2598 of 31st March 1883.)

Government Resolution No. 2598, dated 31st March last, should be held applicable to Mahálkaris, who should continue to exercise the same powers under sections 86 and 87 of the Land Revenue Code which they previously exercised under Regulation XVII of 1827. (G. R. No. 6024 of 15th August 1883, R. D.)

Right to assistance in recovery of Local Fund Cess.

Meaning of Superior Holder in Bombay Act III of 1869 to be gathered from the B. L. R. C.

Memo. of L. R.:—Looking to the manner in which Bombay Act III of 1869 has been amended by Bombay Act I of 1884, and especially to the fact that the references in it to the older revenue law have been changed throughout to references to the Bombay Land Revenue Code, I am unable to concur in the Commissioner's present argument that the term "superior holder" in section 8 of Bombay Act III of 1869 must be interpreted according to the definition of that term in Bombay Act I of 1865 and not according to the definition in the Land Revenue Code.

2. Section 8, Bombay Act III of 1869, enacts that "the provisions of the law relative to the assistance to be given to superior holders for the recovery of their dues from their tenants * * * shall be applicable to all superior holders * * * in respect of the recovery of this cess from their tenants"; and when we enquire what law is here referred to, we find it now-a-days in Sections 86 and 87 of the Land Revenue Code, in which the term "superior holder" is governed by the definition of it given in that Code. On this ground also, I am of opinion that the term "superior holder" in Bombay Act III of 1869 has now the same meaning as in the Land Revenue Code. No special meaning is attached to it in Bombay Act III of 1869 and the enactment which is referred to with respect to it is, therefore, I think, the one in which its meaning must be sought.

3. Without denying that the Desái has a reversionary right in the village of Ranujla or that it is a part of the political holding standing in his sole name in the Collector's records, he is not at present the *de facto* superior holder of it; his bháyads are the superior holders and they, and not he, are legally liable for the local fund cess to Government and they, therefore, and not he, are the persons who are entitled to be assisted, if necessary, to recover it from the tenants. (G. R. No. 2072 of 4th April 1888, R. D.)

Appearances under Sections 86 and 87 need not be made by Pleaders.

Memo. by the Acting L. R.:—"In the accompaniments to Government memorandum No. 8081 of 15th November 1889, the question raised is whether superior holders applying under Section 86 of the Bombay Land Revenue Code for assistance in recovery of dues from inferior holders can be represented by any person who is not a Pleader.

"2. The difficulty arises from Section 196, Bombay Land Revenue Code, which declares that all formal and summary enquiries under that Act shall be deemed judicial proceedings within the meaning of Sections 193, 219 and 228 of the Indian Penal Code, and that the office of any authority holding any such enquiry shall be deemed a Civil Court for the purposes of such enquiry.

"3. It would seem that such inquiries under Sections 86 and 87 of the Bombay Land Revenue Code are judicial proceedings for the purposes only of Sections 193, 219 and 228, Indian Penal Code, and under the maxim *expressio unius est exclusio alterius* are not judicial proceedings for the purposes of any other enactments.

"4. The office of the authority making such an inquiry is a Civil Court for the purposes of the inquiry, but the proceedings are judicial only in the above limited sense and the appearances, applications and acts authorised by law to be made or done, are not made or done by parties to a *suit* or appeal within Section 36, Civil Procedure Code, and Section 37 of the Civil Procedure Code would not appear therefore to apply.

"5. That such offices are not Civil Courts for all purposes is clear from Section 87 of the Bombay Land Revenue Code, which provides for recourse to the Civil Courts as distinguished from such offices.

"6. Regulation II of 1827, Section 47 (1), which is still in force, requires that no person shall be allowed to act in any judicial proceeding in any Court except the Pleaders, the parties or their recognised agents.

"7. But Section 47 refers to Courts appointed under that Act with jurisdiction over all suits of a civil nature of which their cognizance was not barred. It did not refer to what were then called Revenue Courts.

"8. The recourse to the Civil Courts, now reserved by Section 87, Bombay Land Revenue Code, was, under Clause 5 of Section 26 of Regulation 17 of 1827, to the Collector and when this jurisdiction was taken from him by Bombay Act II of 1866, special provision was made by Section 8 of the last-mentioned Act for pleaders engaged in such suits, then pending, to appear in the Civil Courts. This seems to indicate that Section 47 of Regulation II of 1827 was not deemed applicable to Revenue Courts.

"9. As, moreover, inquiries under Section 87, Bombay Land Revenue Code, are by Section 196 judicial proceedings only within the meaning of the specified Sections of the Indian Penal Code, Section 47 of Regulation II of 1827 would not apply to them.

"10 If there is any doubt whatever as to the applicability of Section 37 of the Civil Procedure Code to inquiries under Section 87 of the Bombay Land Revenue Code, it is open to Government, with the previous sanction of the Government of India, to declare that the provisions of Section 37, Civil Procedure Code, shall not apply to such inquiries (*vide* Section 4A (1) of the Civil Procedure Code, as amended by Act VII of 1888, Section 3), or shall apply with such modifications as may be prescribed." (G. R. No. 840, 1st February 1890, R. D.)

Section 88.

Assent of all shares in an Inám village necessary to extension of Chapters VIII to X thereto.

Memo. by the Acting L. R.:—"One of the inámdárs of a village has applied under section 216 of the Bombay Land Revenue Code, 1879, for the extension of the provisions of Chapters VIII to X of that Code to the said village, but one of the sub-sharers has not consented to the introduction of the survey rates into the village. The Commissioner, C. D., considers that the dissent of the sub-sharer is immaterial.

am unable to take the view that the assent of a co-s
the holders of all lands in a village into which a S
cquire thereby the same rights and are affected by
unalienated villages have or are affected by. Am
Honourable Mr. Naylor in his report No. 956 of 1
tion of the Survey Settlement would bar the right
ents above the survey assessments.

ot think the sub-sharer's rights in this and other
assent.

ection 216, Bombay Land Revenue Code, requires
II to X can be extended to alienated villages that th
ng made by the holder of the village.

' is defined in Section 3 (II) of the Bombay Land I
ight to hold land is vested whether solely on his o
rust for another person or for a class of persons, or

under Section 3 (20) includes all lands belonging t

ot think one of two or more sharers can be said to
ands in his village either solely on his own account
other sharers.

herefore the assent of all those in whom such right
of Chapters VIII to X of the Bombay Land Rever
rized under Section 216." (G. R. No. 3346, 7th Ma

e Land Revenue Code is amended by the insertion
Government to survey alienated vil
cultural statistics from them, it app
such villages from the agricultural
in Council cannot, however, but c
lages which have been surveyed and assessed may b
with the co-operation of the owners. Such co-opera
grant of powers under Section 88. The Director of
view and make any suggestions which may hereaft
. No. 7136, 24th Sept. 1883, R. D)

of owners for purtural statistics to dition of powers Section 88.

by the L. R :—" An inámdár who holds a commiss
the power described in clause (a)
Revenue Code is entitled to take
Collector is authorized to take und
Referring to Section 138 of the
nly authorized to take precautions under Sections 1
revenue of the current year' and the inámdár's p

es by Inámdárs for default un-

e power to attach property conferred upon an iná
the Code is not restricted by any reference to any
tment, and there is no reason, I think, for holding th
lice of his demand before proceeding to attach his d
al objection to his sending a preliminary notice to t
such a course would be commendable, but it is not o
entitled afterwards to recover as a revenue-demand
notice." (G. R. No. 2901, 15th April 1886, R. D.)

Section 113.

No. 83 at pages 46 and 47 of the High Court's Ci
cancelled, the Governor in Council i
future Collectors shall be left free t
Land Revenue Code for the levy of the costs of th
s decree of estates paying revenue to Government
. D.)

of partitions.

Section 119.

llency the Governor in Council concurs with the
Section 119 does not contemplate
the ground of incorrectness in thei
96, 23rd May 1889, R. D.)

boundaries.

Section 152.

Notice-fees how to be credited when monies due to other departments are recovered by Revenue Department.

Memo. by the L. R:—When recoveries are made by the officers of the Revenue Department under the provisions of Section 187 of the Land Revenue Code, notice-fees, cost of arrears and expenses of sale, or any one or more of these that may be recovered should be credited to the Land Revenue Department and penalty or interest alone should be credited to the department for which the recovery is made. I base my opinion on the principle that amounts directly connected with the execution of processes, in other words, amounts which represent the money value of the trouble and loss of time caused to the officers of Government, ought naturally to go to the department on which devolves the duty of executing the processes. (G. R. No. 9587, 4th December 1884, R. D.)

Section 176.

Defaulting purchaser's liability when no bid at second sale.

"Certain land has lately been put up to auction in the Olpád Táluka by the Collector in execution of a Civil Court decree. It fetched a bid of Rs. 84, but the purchaser failed to make full payment. The deposit was therefore forfeited to Government and the property again put up to sale, but no bidder appeared. The whole of the price bid at the former sale has therefore been recovered from the defaulting purchaser.

"The deposit being one-fourth of the bid has been credited to Government under Section 175 of the Land Revenue Code. The question is what is to be done with the other three-fourths."

Memo. by the L. R.:—"As there was no bidder at the second auction, no sale of the property has yet been effected. Section 176 of the Land Revenue Code is, therefore, in my opinion, inapplicable to the case at present.*

"2 But supposing that the property should be eventually sold for, say, one rupee, the defaulting purchaser would, I think, be liable to pay under Section 176 the difference between the amount of his bid and one rupee, *i. e.*, Rs. 84—1=Rs. 83. For this sum he would, it seems to me, be liable in addition to the forfeiture of his deposit already made under Section 175, the object of Section 176 being to secure to the owner of the property at least the amount bid for it in the first auction." (G. R. No. 4779, 5th July 1886, R. D.)

Resolutions on Rules 93 to 98. (*Vide p. 43 et seqq.*)

Policy of Government as to trees in varkas.

There is no question that the general policy of Government is, as the Legal Remembrancer represents, to withdraw all interference with the occupants of survey fields, and to leave the land to the cultivator with the use of all that grows upon it. But it is often necessary to make exceptions to a general rule, and a variation of the standing orders in the case of varkas land, of which the circumstances are exceptional, is not a reversal of the general policy.

2. The necessity of treating varkas exceptionally has been established by facts, and is affirmed by officers of great local experience who are themselves among the advocates of the general policy of non-interference and whose advice the Governor in Council is unable to disregard.

3. It is proposed to make an exception to the general rule in the case of three districts only and in these districts only with regard to the peculiar kind of land classed as varkas. This land, though technically occupied, is really forest rather than cultivated land and should never have been brought within the scope of rules properly applicable to the latter. It is covered with valuable trees hitherto reserved, the destruction of which would cause a heavy loss to the State; and it is simply proposed to maintain the reservation, and manage the trees through the Forest Department for the benefit of the public revenues. There will be no stricter surveillance or greater interference on the part of the Forest Department than there has been in the past.

4. What is required is that in varkas lands the Forest Department shall not be bound to cut its reserved timber as soon as possible and to withdraw its interference which is the general rule, but should be empowered to manage the reserved trees, principally teak, to the best advantage, obtaining successive growths by coppicing, and exercising continuous control. In the special circumstances of varkas lands this would not appear necessarily to involve annoyance to the occupants. (G. R. No. 3462, 5th May 1883, R. D.)

Memo. from the Commissioner, C. D., states that in paragraph 6 of Government Resolution No. 4565, dated 13th July 1882, on the forest settlement of the Sátára District, Government direct that the plan of selling to holders of occupied numbers, which are not wanted and never will be required for inclusion in reserved forests, the teak trees growing in those numbers, should be adopted; and enquires whether he is to understand from this order that a notification should be issued informing the owners or holders of such lands that they are at liberty to purchase these trees if they should wish to do so; the Collector states that he sees no objection to the issue of a notice; the Commissioner stating that special orders are necessary for the sale of the trees; making remarks and suggestions; and submitting for approval a form of register of the tree settlement of all non-forest lands.

* Cf. B. H. C. P. J. for 1886, p. 263.

Resolution.—By Resolution No. 3462, dated the 5th May 1883, a special rule has been sanctioned for the preservation of reserved trees in certain exceptional areas below the ghâts. If there are exceptional areas in other districts in which the public interests call for a similar special rule, their cases will be considered as they are submitted.

2. This special rule and the demarcation of forests in progress will obviate all danger of the destruction of forests on water-sheds and mountain slopes which is urged as a reason for not disposing of the trees in occupied numbers to the occupants.

3. The Government trees in numbers which have been registered for future inclusion in forests should not be disposed of, and the Collector has full discretion not to grant the right of occupancy of numbers which contain valuable trees. The orders however in Resolution No. 4565 of July 13th, 1882, paragraph 6, relate to the sale to the occupants of reserved trees in occupied numbers which are not wanted for inclusion in forests. In regard to these the policy of Government is that stated by the Commissioner, C. D.

4. As the demarcation and settlement of forests is now well advanced, it is expedient, as a general rule, that the sale of the trees to the occupants should follow on the completion of the settlement. The area of forest will then have been finally determined, and the trees on occupied numbers not included or to be included in forests should pass into the charge of the Collector, who should offer the whole of the trees on each number to the occupant at a fair upset price. The procedure suggested by the Survey and Settlement Commissioner should be followed, viz., that "the option of purchasing at that price should be continued to the cultivator for a period of, say, two years, in order that, if not possessed of the necessary funds at once, he may try to scrape the amount together. Lists showing all the numbers, the reserved trees in which have not been sold outright and stating the upset price of the trees, should be hung up in the chávdi of the village, so that there may be no chance of any misunderstanding." If the occupant finally declines to purchase, the reserved trees should be cut and removed by the Forest Department.

5. There will be no necessity of a separate register if every sale out and out of reserved kinds of trees to the occupant is communicated by official order of the Mámlatdár to the village accountant, who can record the fact with number and date of order in the column of remarks in the village Register (Hope's Form No. 1). (G. R. No. 3906, 22nd May 1883, R. D.)

Limit of Superior Holder's right to assistance in recovery of Local Fund Cess.

Revenue officers cannot assist Superior Holder to recover on agreement more than is leviable by law.

Memo. by the Acting L. R. :—1. A Jághirdár obtained agreements from his tenants binding them to pay as Local Fund cess sums in excess of the Local Fund actually payable by them in respect of their holdings.

"2. He filed suits on these agreements, and the Subordinate Judge decreed his claim thereon.

"The Jághirdár petitioned the Collector for an order to enable him to obtain the assistance of Revenue officers in recovering these claims.

"3. The Collector considered that the agreement, on which the Jághirdár insisted was void under Section 24 of the Contract Act (IX of 1872), and that the Subordinate Judge's decision was therefore wrong.

"4. No doubt, under Bombay Act III of 1869, Section 8, the right of the Jághirdár to make such recoveries *as arrears of land-revenue with the assistance of Revenue officers* is strictly limited, in the case of each tenant, to the amount leviable by law as Local Fund cess in respect of that tenant's holding.

"The Act gives the special power and privilege, and defines the limits to their exercise. It would, therefore, be illegal for a Revenue officer to assist the Jághirdár in recovering more than that Act authorises by the special procedure of the Bombay Land Revenue Code (Sections 86 and 87 of Bombay Act V of 1879).

"5. Such contracts would not extend the powers of Revenue officers to give their assistance for recovery. The Jághirdár, therefore, could not enforce such contracts without recourse to the Civil Courts.

"6. But there is nothing in Section 8 of Bombay Act III of 1869, which makes it unlawful for any one to pay more or to contract to pay more than the law would oblige him to pay, or more than could be recovered by the special summary procedure there prescribed.

"8. If there were any room for doubt as to the lawfulness of the object, the only way that the question could be raised would be by an appeal made by the tenants themselves. But there is clearly nothing unlawful in an undertaking to pay money. Possibly a tenant might raise the question whether there was any consideration for such an agreement. The Court would then probably consider that the mere mention of the Local Fund cess as the nominal reason for the addition to the rent, would not materially distinguish the case from that of an ordinary agreement to pay so much rent in a lump sum without distinguishing or specifying the items. The contract might be successfully impugned of course, if undue influence, misrepresentation or coercion were shown. Such objection would have to be taken by the tenant in Court. But if the tenants have entered into the contract with their eyes open, there is nothing to prevent the plaintiff from enforcing the contract in a Civil Court, although the contract would, by no means, entitle him to recover from his tenants, as Local Fund cess, with the assistance of Revenue officers, more than he could recover under the Act (Bombay Act III of 1869, Section 8) without such contract." (G. R. No. 4013 of 3rd June 1889, R. D.)